



Revision number:

Purchasing Agent: Jared Gardner  
Phone #: (801) 538-3342  
Email: [jaredgardner@utah.gov](mailto:jaredgardner@utah.gov)

**Item: COMPUTERS-MANUFACTURER DIRECT (WSCA)-ENERGY STAR COMPLIANT**

Vendor: 35434J G Sun Microsystems, Inc.  
500 Eldorado Blvd.  
Building 5  
Broomfield, CO 80021

Remit To: 35434J A Sun Microsystems, Inc.  
c/o Bank of America  
Dept. 1489, P.O. Box 61000  
San Francisco, CA 94161

Internet Homepage: [www.sun.com/products-n-solutions/government/wsc/](http://www.sun.com/products-n-solutions/government/wsc/)

General Contact: Jerry Regelean  
Telephone: (303) 272-5066  
Fax number: (303)-272-8979  
Email: [jerry.regelean@sun.com](mailto:jerry.regelean@sun.com)

Usage Report Contact: Jerry Regelean  
Telephone: (303) 272-5066  
Fax number: (303)-272-8979  
Email: [jerry.regelean@sun.com](mailto:jerry.regelean@sun.com)  
Reporting Type: Line-Item

Brand/trade name: Sun Microsystems

Price: See discounts below. Specific pricing can be obtained from the web page or through a servicing subcontractor.

Payment Terms: Net 30 Days

Effective dates: 06/06/06 through 08/31/07

Renewal options remaining: Potential renewals through 08/31/09 (Two (2) One (1) year terms)

Days required for delivery: 10-14 days after receipt of order

Price guarantee period: 90 days

Freight: FOB Destination

Other conditions: No single unit/configuration may exceed \$100,000

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**This is a new contract. Please review all associated documents before placing an order.**

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This is a multiple award contract. Please review the following contracts for optimal pricing, delivery and service before making your purchasing decision: **MA1137 (DELL)**, **MA575 (GATEWAY)**, **MA432 (HP)**, **MA130 (IBM)**, **MA1817 (MPC-G)**, and **MA1917 (LENOVO)**. Documentation of your purchasing decision should be kept for each transaction.

This contract covers only those items listed in the price schedule. It is the responsibility of the agency to ensure that other items purchased are invoiced separately. State agencies will place orders directly with the vendor (creating a PG in Finet) and make payments for the same on a PV referencing the original PG. Agencies will return to the vendor any invoice which reflects incorrect pricing.



### Scope of Contract

**File/Print Servers, Mid-Range Servers, Workstations, and Auxiliary Storage Solutions are available for purchase under this contract.**

Pricing listed on the web page for this vendor is the maximum price per single item. If you are in need of multiple units you can often achieve better pricing by sending this request to the contract's contact for a quote. The greater the quantity and more standardized your configurations are will reduce the quote. Also soliciting competing quotes among the different manufactures will also lead to more aggressive pricing.

Software listed on the Sun's webpage is not available under this contract and should not be purchased. Please see contracts MA-362, MA-371, MA-1448, and MA-1449 for off the shelf software and see the appropriate contract for enterprise managed licenses programs.

**This agreement is NOT for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations should not exceed \$100,000.00 each. However, this does not limit how many items or the total dollar limit on any given purchase.**

### Ordering

Orders may be placed directly with Sun or Sun has assigned two servicing subcontractors to this contract who will provide configuration and ordering assistance. Orders and payments may be made directly to these vendors under this contract.

#### Advanced Systems Group Finet Vendor #: 94934A

##### Sale Contact

Mike Polinsky  
341 South Main Street #409  
Salt Lake City, Utah 84111  
Attn: Mike Polinsky  
Phone: 801-656-1135  
Fax: 866-572-5266  
e-mail: [mpolinsky@virtual.com](mailto:mpolinsky@virtual.com)

##### Order Placement

341 South Main Street #409  
Salt Lake City, Utah 84111  
Attn: Mike Polinsky  
Fax: 866-572-5266  
e-mail: [mpolinsky@virtual.com](mailto:mpolinsky@virtual.com)

#### Technologent Finet Vendor #: 123684A

##### Sales Contact

Bret Breford  
Senior Account Executive  
3350 Clubview Terrace  
Colorado Springs, CO 80906  
Phone: 719-237-5143

Scott Sanders  
Senior Systems Engineer  
Phone: 719-440-8448

##### Order Placement

19 Rancho Circle  
Lake Forest, CA 92630-8324  
Attn: Francois DesCotes  
Fax: 972-726-7201

Julie Haskell  
Government Enterprise Service Manager  
224 North Main Street  
Ainsworth, NE 69201  
Phone: 402-387-8019  
Fax: 402-387-8063  
Email: [julie.haskell@technologent.com](mailto:julie.haskell@technologent.com)

**Pricing**

Pricing can be obtained by visiting the Sun web page:

[www.sun.com/products-n-solutions/government/wsca/](http://www.sun.com/products-n-solutions/government/wsca/)

First time users will have to register for a username and password.

**Discount Percentages**

WSCA Contract #85627 Discount Categories		
Category	Description	
A	High Volume Servers	28%
B	Software and Enterprise Products	19%
D	Non-Discountable Products	0%
E	List Equals Street Price	0%
H	High Volume Products	9%
J	SunOne Infrastructure Products	21%
M	Sun-Coblat Appliance Products	10%
N	Java	0%
P	Enterprise Storage Products	20%
S	SIU Warranty Upgrade	20%

Single PO over \$2.5M - Additional 1% discount

Contract year purchases > \$25M - Additional 2% (applied to baseline discounts established for year 1 of the contract.)

**FINET COMMODITY CODE(S):**

20416000000 Chips: Accelerator, Graphics, Math Co-processor, Memory (Ram and Rom), Network, Etc.

20419000000 Communication Boards: Fax, Modem (Internal), Etc.

20433000000 Drives, Compact Disk (Cd Rom, Etc.)

20434000000 Drives, Floppy Disk

20435000000 Drives, Hard/fixed Disk

20437000000 Drives, Tape

20442000000 Expansion/accelerator Boards: Memory, Processor, Etc.

20453000000 Microcomputers, Desktop or Towerbased

20454000000 Microcomputers, Handheld, Laptop, and Notebook

20455000000 Microcomputers, Multi-processor

20458000000 Modems, External, Data Communications

20460000000 Monitors, Color and Monochrome (Cga, Vga, Svga, Etc.)

20464000000 Network Components: Adapter Cards, Bridges, Connectors, Expansion Modules/ports, Hubs, Line Drivers, Msaues, Routers, Transceivers,etc

20468000000 Peripherals, Miscellaneous: Joy Sticks, Graphic Digitizers, Light Pens, Mice, Pen Pads, Trackballs, Etc.

20484000000 Retrieval Systems, Computer Assisted: Indexing, Retrieval (Cd Rom Jukebox, Etc.) And Access Systems



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**REVISION HISTORY:**

## **PARTICIPATING ADDENDUM**

### **COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES MASTER PRICE AGREEMENT NUMBER A85627**

**SUN MICROSYSTEMS, INC.**

**STATE of UTAH  
Utah Contract Number MA-2008**

#### **1. Scope**

This is a contract for furnishing supplies, services, and equipment to the State of Utah government departments, institutions, agencies and political subdivisions. (ie, universities, colleges, counties, cities, towns, school districts, special service districts, etc.)

#### **2. Changes By The Participating Entity:**

The following clauses are to be added:

**1. AUTHORITY:** Provisions of this participating addendum are pursuant to the authority set forth in 63-56, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.

**2. LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations.

**3. AMENDMENTS:** The terms of this participating addendum will not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the State Director of Purchasing.

**4. DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the STATE.

**5. CANCELLATION:** This participating addendum may be canceled by either party without cause upon 60 days notice, in writing, prior to the effective date of the cancellation. Cancellation may be in whole or in part. Cancellation of the participating agreement due to Contractor default may be immediate.

**6. TAXES:** The State of Utah and its political subdivisions are exempt from paying sales and use tax. The State of Utah=s sales and use tax exemption number is E33399. The State of Utah=s Federal excise exemption number is 87-780019K

**7. REPORTS AND FEES:** The Contractor will submit quarterly reports to the

State Purchasing Agent showing the quantities and dollar volume of purchases by each agency and political subdivision. The report shall be in an electronic Excel format to be specified by the State of Utah and will be sent to [salesreports@utah.gov](mailto:salesreports@utah.gov) by the due dates for each quarter. The report shall be followed by a check payable to Utah Division of Purchasing for an amount equal to one tenth of one percent (0.10%) of the gross Utah sales less returns for the quarterly period.

<u>Period End</u>	<u>Report Due</u>
September 30	October 31
December 31	January 31
March 31	April 30
June 30	July 31

The contractor further agrees to work with the State of Utah to generate specific reports to assist in special needs.

**8. PAYMENT:** Purchasers shall make a good faith effort to pay invoices within 30 days from date of invoice. After 30 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments may be made via a State of Utah (or political subdivision) "Purchasing Card". All payments to the Contractor will be remitted by mail unless paid by Purchasing Card.

**9. PUBLIC INFORMATION:** Contractor agrees that this participating addendum and the contract will be a public document, as far as distribution of copies, and Contractor gives the STATE express permission to make copies of the contract and/or of the response to the solicitation in accordance with the State of Utah Government Records Access and Management Act. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, or copyright information.

**10. ADDITIONAL SERVICES:** Professional services purchased by the customer must be related to and/or associated with the purchase of the product pursuant to this Participating Addendum.

**11. LEASE AGREEMENTS:** Leasing is not an option under this agreement.

**12. INDIVIDUAL CUSTOMERS:** Each State agency and each political subdivision, as a State Entity, that uses this will be treated as if they were individual Customers. Each agency and each political subdivision will be responsible for their own charges, fees, and liabilities. The Contractor will apply the charges to each State Entity individually.

**13. PRECEDENCE OF DUPLICATE TERMS AND CONDITIONS:** When a term or condition is located in both the master price agreement and the exhibits of the master price agreement; the master price agreement term or condition will take precedence.

**14. SOFTWARE:** Software, with the exception of products necessary for a machine to operate its most basic functions, is not included within the scope the contract.

**3. Primary Contact:**

The primary Participating Entity contact for this Participating Addendum is as follows:

**Name:** Jared Gardner  
**Participating Entity Name:** State of Utah  
**Address:** 3150 State Office Building, Salt Lake City, UT 84114  
**Telephone:** (801) 538-3342  
**Fax:** (801) 538-3882  
**E-mail:** [jaredgardner@utah.gov](mailto:jaredgardner@utah.gov)

The primary Contractor contact for this Participating Addendum is as follows:

**Name:** Jack Nichols, Manager, State and Local Government Contracts  
**Contractor:** Sun Microsystems, Inc.  
**Address:** 1775 Wiehle Ave., Mailstop URSN03  
Reston, VA 20190  
**Telephone:** 571.203-8116  
**Fax:** 571.203.8020  
**Email:** [jack.nichols@Sun.com](mailto:jack.nichols@Sun.com)

**4. Servicing Subcontractors:**

Only Sun Microsystems's authorized Partners that have been approved by Sun and the Participating entity are eligible to support the Master Price Agreement. These approved Partners will be identified on the individual website for the Participating Entity. Sun's WSCA Partners will be responsible for performing all aspects of the WSCA contract including taking Purchase Orders direct, fulfilling Purchase Orders, invoicing and receiving payment as identified on the individual website for the Participating Entity. As the prime WSCA Contract holder Sun Microsystems will be responsible for any reports and/or sales rebates that the Participating Entity requires at sets forth under Paragraph 2 above.

Advanced Systems Group

341 South Main Street #409

Salt Lake City, Ut 84111

Contact: Mike Polinsky - State & Local Government Sales Manager - Utah

Phone: 801 656 -1135

Technologent

3350 Clubview Terrace

Colorado Springs, CO 80906

Contact: Bret Breford – Sr. Sales Consultant

Phone: 719 237-5143

**5. Orders and Payments:**

Unless otherwise named and identified to the Participating Entity pursuant to Paragraph 4 above of this Participating Addendum, orders and payments are to be issued to:

**Orders:**

Sun Microsystems, Inc.  
7777 Gateway Blvd.

Newark, CA 94560  
Attention: Judy Ledyard  
Fax: 510.217.6040  
Email: [judy.ledyard@Sun.com](mailto:judy.ledyard@Sun.com)

**Payments:**

(Participating Entity to select the nearest Payment Office):

[X] Sun Microsystems, Inc.  
c/o Bank of America  
Dept. 1489  
P.O. Box 61000  
San Francisco, CA 94161

The NASPO/WSCA Master Price Agreement Number A85627 must be shown on all Purchase Orders.

This Addendum and the Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

**IN WITNESS WHEREOF**, the parties have executed this Participating Addendum as of the date of execution by Contractor below.

Entity Name: State of Utah

By: 

Name: Douglas G. Richins

Title: Director of Purchasing

Date: JUN 06 2006

Contractor: Sun Microsystems, Inc.

By: 

Name: ROBERT LAVINE

Title: DIRECTOR, State & Local Gov't

Date: June 5, 2006

**WESTERN STATES CONTRACTING ALLIANCE**  
**MASTER PRICE AGREEMENT**  
**for**  
**COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED**  
**SERVICES**

**Number A85627**

This Agreement is made and entered into by Sun Microsystems, Inc. ("Contractor") and the Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Participating States and Participating Entities.

**RECITALS**

**WHEREAS**, the State has the need to purchase and the Contractor desire to sell; and,

**WHEREAS**, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties agree as follows:

**INTENT AND PURPOSE**

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. The Contractor may use subcontractors to provide the warranty and/or maintenance services; however the Contractor will be responsible for working with the equipment manufacturer on behalf of the Purchasing Entity and for the timeliness and quality of all services provided.

It is the further intent of this Agreement that leasing or rental agreements are not included. Each Participating Entity is allowed to negotiate leasing or rental agreements into their Participating Addendum, if they have the legal authority to enter into these types of agreements without going through a competitive process.

The Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations should not exceed \$100,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each, or \$50,000. Contractors must be willing to comply with these restrictions by agreeing to supply products in those price ranges only. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum above the \$100,000, with the prior approval of the WSCA Directors.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.

1. **Definitions**

**"Announced Promotional Price"** are prices offered nationally to all customers for defined time periods under predefined terms and conditions.

**"Confidential Information"** means any information disclosed by one party to another party under the Master Price Agreement or any Participating Addendum of a Participating State or Participating Entity.

**"Contract"** means an agreement for the procurement of items of tangible personal property or services.

**"Contract Administrator"** means to an individual appointed by the State to administer this Agreement on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

**"Contractor"** shall mean successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance services for the products included in this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof.

**"Consumables"** that are required for the operation of Equipment offered or supplied are included -- printer cartridges, batteries, projector bulbs, etc. Consumables such as magnetic media, paper and generally available office supplies are excluded.

**"CPV Member"** is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota's Cooperative Purchasing Venture (CPV) program.

**"CPV Program"** The Cooperative Purchasing Venture (CPV) program, as established by Minn. Stat. § 16C.03, subd. 10, authorizes the Commissioner of Administration to "enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as described in section 471.59, subdivision 1." Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the "State contract price."

**"Cumulative Volume Discount"** means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of their Master Price Agreement.

**"Documentation"** refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor's web site.

**"E-Rate"** is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

**"Educational Discount Price"** means the price offered in a nationally announced promotion, which is limited to educational customers only, as defined by the Contractor.

**"Energy Star®"** is a voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes identification of energy efficient computers easy by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. Energy Star qualified computers and monitors automatically power down to 15 watts or less when not in use and may actually last longer than conventional products because they spend a large portion of time in a low-power sleep mode. For additional information on the Energy Star program, including product specifications and a list of qualifying products, visit the Energy Star website at <http://www.energystar.gov>.

**"Equipment"** means workstations, desktop, servers, and storage drives, including upgrade components such as memory, storage drives, and spare parts.

**"FCC"** means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

**"General Price Reduction Price"** means a Sun Commercial List price offered to consumer, business or governmental purchaser at prices lower than The Sun Commercial List prices used as a basis for the PSS pricing. General price reduction prices will be reflected in the PSS as soon as practical.

**"ISO 14001"** is the conformance standard within the family of ISO 14000 documents developed by the International Organization for Standardization (ISO) in Geneva, Switzerland. Similar in structure to the ISO 9000 quality management system standard, ISO 14001 outlines key requirements companies should comply with in order to operate in an environmentally responsible manner. Utilizing ISO 14001, companies can merge environmental programs into one coherent system to efficiently manage all environmental activities. In short, ISO 14001 provides organizations with a way to demonstrate to their customers that their environmental processes and impact are effectively managed, continually improving, and part of the corporate management system. For more information, please refer to [www.iso.org](http://www.iso.org).

**"Lead State"** means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this solicitation, the Lead State is Minnesota.

**"Mandatory"** The terms "must" and "shall" identify a mandatory item or factor.

**"Manufacturer"** means the company that designs, assembles, and markets computer equipment including workstations, desktop computers, laptop (includes Tablet PC's) computers, handheld (PDA) devices, servers, printers, and storage solutions/auxiliary storage devices. The manufacturer's name(s) shall appear on the computer equipment. **The Contractor shall provide warranty service and maintenance for equipment covered by this Agreement as well as a Takeback Program.**

**"Master Price Agreement"** means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of Contractor's products and/or services by Purchasing Entities. The "master price agreement" is a permissive price. In order for a Purchasing Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or Participating Entity.

**"Materials Management Division" or "MMD"** means the procurement official for the State of Minnesota or a designated representative.

**"NASPO"** means the National Association of State Procurement Officials

**"Participating Addendum"** means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to a State or political subdivision and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the master price agreement. Additional terms and conditions may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. **Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price Agreement.** One physically or digitally signed copy of each Participating Addendum shall be filed by the Contractor with the Contract Administrator within five (5) days after execution.

**"Participating State" or "Participating Entity"** means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, or who subsequently signs a Participating Addendum where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement through the execution of a participating addendum.

**"Per Transaction Multiple Unit Discount"** means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple Purchasing Entities conducting a cooperative purchase.

**"Political Subdivision"** means local public governmental subdivisions of a state, as defined by that state's statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

**"Price Agreement"** means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

**"Procurement Manager"** means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating Entities.

**"Product(s)"** means personal computer equipment, LAN hardware, and Network Storage devices, but not unrelated services. **The contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.**

**"Products and Services Schedule Prices"** mean the maximum prices offered to Participating Entities exclusive of Announced Promotional Prices, Education Discount Prices, General Price Reductions, or Large Order Negotiated Prices. All such products and services shall be listed on the Contractor's web site accessible via a URL.

**"Purchase Order"** means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

**"Purchasing Entity"** means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a Agreement for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

**"Services"** are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/help desk, and any other directly related technical support service required for the effective operation of a product offered or supplied. General consulting and all forms of application development and programming services are excluded.

**"Servicing Subcontractor" or "Agent Reseller" or "Subcontractor"** means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor's Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided in a Participating Agreement. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. **The Contractor actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor's providing warranty service and maintenance for equipment on a Master Price Agreement as well as the Take back Program.**

**"Standard Configurations"** mean deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

**"State Procurement Official"** means the director of the central purchasing authority of a state.

**"Storage Solution/Auxiliary Storage"** means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS); Storage Area Networks (SAN); Content Addressed Storage (CAS); and/or Clustered Network Storage (CNS).

**"Takeback Program"** means the Contractor's process for accepting the return of the equipment or other products at the end of life.

**"Trade In"** refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment.

**"Travel"** means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the purchasing entities allowances, if any, as outlined in the PA.

**"Universal Resource Locator" or "URL"** means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

**"WSCA"** means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

## 2. **Scope of Work**

The Contractor, or its approved subcontractor, shall accept purchase orders from and deliver computing system Products and services to Purchasing Entities in accordance with the terms of this Agreement. This Agreement is a "Master Price Agreement". Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by the Contractor of valid "Purchase Orders". Purchase Orders may be issued to purchase the license for software or to purchase products listed on the Contractor's PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor's PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official. The Contractor is required to provide warranty and maintenance services on equipment that is purchased. The Contractor shall offer a Takeback Program for all products covered by this Agreement.

## 3. **Title Passage**

The Contractor must pass unencumbered title to any and all products purchased under this Agreement upon receipt of the product by the Purchasing Entity. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensor, or to unmodified commercial software that is available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement.

## 4. **Permissive Price Agreement and Quantity Guarantee**

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and services from other sources during the agreement term. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

5. **Order of Precedence**

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and Services listed on the Purchase Order only; no additional terms or conditions conflicting with this Agreement or the Participating Addendum will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Participating Addendum(s);
- B. Terms and conditions of this Agreement;
- C. Exhibits and amendments to this Agreement;
- D. The list of products and services contained in the purchase order;
- E. The request for proposals document P-1331 and Addenda thereto; and
- F. Contractor's proposal including any written clarifications and/or best and final offer.

6. **Payment Provisions**

All payments under this Agreement are subject to the following provisions:

A. **Acceptance**

A Purchasing Entity shall determine whether all Products and Services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor within thirty (30) calendar days following delivery of non-acceptance of a product or service. In the event the Contractor has not been notified within 30 days from delivery of the product or completion of the service, the product and/or service will be deemed accepted on the 31<sup>st</sup> day after delivery of product or completion of service.

B. **Payment of Invoice**

1. Payments shall be submitted to the Contractor at the address shown on the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Payments shall be made in accordance with the applicable laws of the Purchasing Entity.

2. For Minnesota, per Minn. Stat. § 16A.124, payment shall be made to the Contractor within thirty (30) days following receipt of an undisputed invoice, merchandise or service whichever is later. After the thirtieth day, interest may be paid on the unpaid balance due to the Contractor at the rate of one and one-half percent per month. The Purchasing Entity shall make a good-faith effort to pay within thirty (30) days on all undisputed invoices. Payments may be made via a Purchasing Entity's "Purchasing Card".

3. In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

C. **Payment of Taxes**

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes. Taxes for State agencies will be paid directly to the Department of Revenue using Direct Pay Permit #1114.

**D. Invoices**

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Contractor shall provide a commercial invoice. The Contractor shall also provide a packing slip/list for each system to identify the components included within the configuration. Invoices shall match the line items on the Purchase Order.

**7. Agreement Term**

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota, through August 31, 2007. The Agreement may be mutually renewed for two (2) additional one-year terms unless terminated pursuant to the terms of this Agreement.

**8. Termination**

The following provisions are applicable in the event that the agreement is terminated.

**A. Termination for Convenience**

At any time, the State may terminate this agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the Contract Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

**B. Termination for Cause**

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

**C. A Purchasing Entity's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and services accepted prior to the effective termination date.

**D. The Contractor's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

9. **Non-Appropriation**

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.

10. **Shipment and Risk of Loss**

- A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until delivery to the identified ship to address when responsibility and liability for loss shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.
- B. Whenever a Purchasing Entity does not accept Products and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the pick-up of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products except for loss or damage directly attributable to the negligence or wrongful intentional act or omission of the Purchasing Entity.
- C. Unless otherwise arranged between the Purchasing Entity and Contractor, all shipments of Products should be shipped within three-to-five days by a reliable and insured shipping company.

11. **Warranties**

- A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses or sells to the Purchasing Entity under this Agreement in accordance with the Contractor's standard warranties (See Exhibit A). In general, the Contractor warrants that:
  - 1. The Product will conform with the specific technical information about the Contractor's products which is published in the Contractor's product manuals or data sheets.
  - 2. The Product will meet any mandatory specifications provided in writing to the Contractor prior to reliance by the Participating Entity on the Contractor's skill or judgment when it advised the Purchasing Entity about the Product's ability to meet those mandatory specifications, and
  - 3. The Product is free of significant defects in material and workmanship, or unusual problems about which the Purchasing Entity has not been warned.
  - 4. Exhibit A contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Exhibit A. The warranties will not apply to use of a Product other than as anticipated and intended by

the Contractor, to a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or to use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranty upgrades that are available if the product basic warranties do not meet business needs. A general description of these warranty upgrades are provided in **Exhibit A**. Detailed descriptions of Sun's warranty upgrades can be found on the Sun Services website ([www.sun.com/services/](http://www.sun.com/services/)).

- a) **SunSpectrum Platinum Support** (Mission-Critical)
- b) **SunSpectrum Gold Support** (Business-Critical)
- c) **SunSpectrum Silver Support** (Basic)
- d) **SunSpectrum Bronze Support** (Self-Maintenance)

- B. Contractor may modify the warranties described in Exhibit A from time to time with 30 days prior written approval of the Contract Administrator.
- C. Warranty documents for Products manufactured by a third party shall be delivered to the Purchasing Entity with the Products, as provided by the Manufacturer.

12. **Patent, Copyright, Trademark and Trade Secret Indemnification**

- A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating States, Participating Entities, Purchasing Entities against any claim that any Product or Service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a Purchasing Entity based upon the Contractor's trade secret infringement relating to any Product or Service provided under this Agreement, the Contractor agrees to reimburse the Purchasing Entity for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:
  - 1. Give the Contractor prompt written notice of any claim;
  - 2. Allow the Contractor to control the defense or settlement of the claim; and
  - 3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any Products or Service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:
  - 1. Provide a Purchasing Entity the right to continue using the Products or Services;
  - 2. Replace or modify the Products or Services so that it becomes non-infringing; or
  - 3. Accept the return of the Products or Service and refund an amount equal to the depreciated value of the returned Products or Service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any Products or Services modified by the Purchasing Entity to the extent such modification is the cause of the claim.
- C. The Contractor has no obligation for any claim of infringement arising from:
  - 1. The Contractor's compliance with the Purchasing Entity's or by a third party on the Purchasing Entity's behalf designs, specifications, or instructions;
  - 2. The Contractor's use of technical information or technology provided by the Purchasing Entity;

3. Product modifications by the Purchasing Entity or a third party;
4. Product use prohibited by Specifications or related application notes; or
5. Product use with products that are not the Contractor branded.

**13. Price Guarantees**

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price (applies to Education customers that are Participating Entities only), General Price Reduction price, Trade-In price (per Contractor's Trade-In program), Per Transaction Multiple Unit Discount Price, or Standard Configuration Price. Only the General Price Reduction price decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial Cumulative, Per Transaction Multiple Unit, and Standard Configurations Discounts shall be submitted to the Contract Administrator in a format agreeable to both parties prior to signing the Agreement. Once a cumulative volume has been reached, the increased price discount will apply to all future orders, until the next level of cumulative volume is reached.

**14. Product and Service Schedule**

The Contractor agrees to maintain the PSS in accordance with the following provisions:

- A. The PSS prices for Products and services will conform to the guaranteed price discount levels on file with the Contract Administrator for the following Products:  
 Band 1: File/Print Servers, Mid-Range Servers  
 Band 2: Workstations  
 Band 4: Auxiliary Storage Solutions
- B. The Contractor may change the price of any Product or Service at any time, based upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.
- C. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS in accordance with Item 15. Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the Contract Administrator for similar Products or Services.
- D. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.
- E. The Contractor shall maintain the PSS on a Contractor supplied Internet web site that has been formally approved by the Contract Administrator.

**15. Product Substitutions**

**A. Substitution of units/configurations**

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting Agreements. Substitution of different units and configurations will be permitted with the prior written approval of the Contract Administrator.

This substitution is at the sole discretion of the Contract Administrator, subject only to review and approval of the Contract Administrator.

**B. Addition of units/configurations**

MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units to the PSS may be permitted, with the prior approval of the Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the Contract Administrator, subject only to review and approval of the WSCA Directors.

**16. Technical Support**

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the hardware and software installation or operation of Contractor-supplied Products during the product warranty period or during a support agreement.

**17. Take back/Environment/Energy Efficiency Programs**

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in their response to the RFP, including but not limited to:

- A. Take back/Recycling of CPUs, servers, monitors, flat panel displays, notebook computers, and printers. Costs are listed on the web site.
- B. Environment: Compliance with the European Unions' Directives, or other international directives; reduction/minimization/avoidance of the use of toxic and hazardous constituents; certification by independent third party eco-labeling programs (TCO, Blue Angel, and Nordic Swan); ISO 14001 certification; and the use of recyclable, nontoxic packaging.
- C. Energy Efficiency: Products meet the Energy Star or other recognized programs for energy efficiency.
- D. Product labeling of compliance with Items B & C above, as well as identification of such information on the web site.

The Contractor will notify the Contract Administrator, in writing, of any additions/changes/deletions to the above programs.

**18. Product Delivery**

Contractor agrees to use commercially reasonable efforts to deliver Products to Purchasing Entities within 10 - 14 days after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order, as agreed to between the Purchasing Entity and the Contractor.

**19. Force Majeure**

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, strike, riot, industry-wide constraints, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

**20. Records and Audit**

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Minnesota transactions must be made available and subject to examination by the contracting agency or its agents, the Legislative Auditor and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

**21. Independent Contractor**

The Contractor and its agents and employees are independent contractors and are not employees of the State of Minnesota or of any participating entity. The Contractor has no authorization, express or implied to bind the Lead State, NASPO, WSCA or any Participating Entity to any agreements, settlements, liability or understanding with other third parties whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or Participating Entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement, ... insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead State or Participating Entity as a result of this Agreement.

**22. Use of Servicing Subcontractors**

The Contractor may subcontract services and purchase order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

- A. Reseller/Agent, Service Provider or Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum, or as noted in the Participating Addendum on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

**23. Payments to Subcontractors**

In the event the Contractor hires subcontractors to perform all or some of the duties of this Agreement, the Contractor understands that Minn. Stat. § 16A.1245 requires that any such subcontractor be paid within ten (10) days of the Contractor's receipt of payment from the State for undisputed services provided by the subcontractor. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Agreement. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor any amounts due from the Contractor for work performed under this Agreement and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor. The Contractor shall ensure that the subcontractor transfers all intellectual or industrial property rights, including but not limited to any copyright it may have in the work performed under this Agreement, consistent with the intellectual property rights and ownership sections of this Agreement. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Agreement, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

**24. Indemnification**

The Contractor shall hold the Lead State, Participating Entities and its agencies and employees harmless and shall indemnify the Lead State, Participating Entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to real property or tangible personal property arising from the negligent or willful acts or omissions of the contractor, its agents, officers, employees or subcontractors. Contractor shall not be liable for damages that are the result of negligence by the Lead State, Participating Entity, or its employees.

**25. Amendments**

Agreement amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Agreement amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

**26. Scope of Agreement**

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**27. Severability**

If any provision of this Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Agreement is legally valid, it shall not be affected by such declaration or finding and shall be fully performed.

**28. Enforcement of Agreement/Waivers**

- A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Agreement shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the forbearing/indulging party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.
- B. Waiver of any breach of any provision of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.
- C. Neither party's failure to exercise any of its rights under this Agreement will constitute or be deemed a waiver or forfeiture of those rights.

**29. Web Site Maintenance**

- A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the approved PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product specifications and other aids in accordance with reasonable instructions provided by the

Contract Administrator. The Contractor agrees that the approved PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.

- B. The Contractor agrees to maintain and support Participating State and Entity Internet website for access to the specific Participating Entity PSS, as well as all other items listed in Item 29.A. listed above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.
- C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reporting.

30. **Equal Opportunity Compliance**

The Contractor agrees to abide by federal laws and the laws, regulations, and executive orders of the state in which it's primary place of business is located pertaining to equal employment opportunity. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of the Agreement.

31. **Limitation of Liability**

The Contractor's liability to a Purchasing Entity for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the Purchasing Entity's claim. The foregoing limitation does not apply to Paragraphs 12 and 24 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence. In no event shall the Contractor be liable for any indirect, special, punitive, or consequential damages arising out of this Agreement or the use of the Products or Services purchased by the Purchasing Entity hereunder.

32. **Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

33. **Change in Contractor Representatives**

Contractor shall appoint a primary representative to work with the Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the Contract Administrator of changes in any Contractor key personnel, in writing, and in advance, if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is

not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

**34. Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the Lead State and Participating Entities, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement, except as expressly provided in Paragraph 41. Survival, below. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

**35. Data Practices**

- A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor in accordance with this Agreement that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13.
- B. In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data referred to in this article by either the Contractor or the State.
- C. The Contractor agrees to indemnify, save, and hold the State, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of the Agreement. In the event that the Contractor subcontracts any or all of the work to be performed under the Agreement, the Contractor shall retain responsibility under the terms of this paragraph for such work.
- D. A party receiving Confidential Information ("the Recipient") must keep it confidential using the same degree of care that it exercises with respect to its own information of like importance but in no event less than reasonable care, and may use it only for the purposes for which it was provided under the Master Price Agreement. Confidential information may be disclosed only to employees, contractors and third-party providers performing services in furtherance of this Master Price agreement and/or each party's internal activities, that are obligated to the Recipient under similar confidentiality restrictions and only for the purposes for which it was provided under the relevant Master Price agreement. These obligations do not apply to information which;
  - (a) is rightfully obtained by the Recipient without breach of any obligation to maintain its confidentiality;
  - (b) is or becomes known to the public through no act or omission of the Recipient;
  - (c) the Recipient develops independently without using Confidential Information of the other party; or

(d) is disclosed in response to a valid court or government order, if the Recipient has given the other party prior written notice and provides reasonable assistance so as to afford it the opportunity to object.

- E. The Contractor agrees to be bound by the data practices requirements as outlined in the Participating Addendum of a Participating State or Participating Entity.

**36. Organizational Conflicts of Interest**

- A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:
- a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
  - the Contractor's objectivity in performing the work is or might be otherwise impaired; or
  - the Contractor has an unfair competitive advantage.
- B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Agreement. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Agreement and did not disclose the conflict to the Contract Administrator, the State may terminate the Agreement for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Agreement," "Contractor," and "Contract Administrator" modified appropriately to preserve the State's rights.

**37. Replacement Parts**

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be refurbished.

**38. FCC Certification**

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

**39. Site Preparation**

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and Services and shall bear the costs associated with the site preparation.

**40. Assignment**

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Agreement or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. This Agreement is a manufactured-direct solicitation and Agreement. Assignment to an entity that is not a manufacturer, as defined in this Agreement, is **NOT** within the Scope of this Agreement. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the

State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Agreement. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Agreement due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Agreement to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Agreement. The Contractor may assign payments in accordance with specific provisions stated in a Participating Addendum.

**41. Survival**

Certain paragraphs of this agreement including but not limited to Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; Limitation of Liability; Governing Law; Audits; and Publicity shall survive the expiration of this agreement. Software licenses, warranty and service agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

**42. Succession**

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

**43. Notification**

- A. If one party is required to give notice to the other under the Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery through the US Postal service shall be deemed as delivered three business days after being mailed. Delivery may be by certified United States mail, or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. All notices shall be addressed as follows:

**To MMD:**

Department of Administration  
Materials Management Division  
Bernadette Kopischke, CPPB  
Acquisition Management Specialist  
50 Sherburne Avenue  
112 State Administration Building  
St. Paul, MN 55155  
Fax: 651.297.3996  
Email: bernie.kopischke@state.mn.us

**To Contractor:**

Jack Nichols  
Manager, State and Local Government Contracts  
Sun Microsystems, Inc.  
7900 Westpark Drive, Suite A110  
McLean, VA 22102-4203  
Phone: 703.204.4167  
Fax: 703.280.5830  
Email: jack.nichols@sun.com

- B. Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 44. The carrier for mail delivery and notices shall be the agent of the sender.

44. **Reporting and Fees**

A. **Administration Reporting and Fees**

1. The Contractor agrees to provide periodic utilization reports to the Contract Administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 30
December 31	January 31
March 31	April 30

2. The periodic report shall include, but not be limited to the net (gross sales minus returns, credits, and deductions) sales for the period subtotaled by Purchasing Entity name, within the Purchasing Entity's state name. A standard format of data elements shall be developed for the report. The Contractor shall submit a check payable to Western States Contracting Alliance for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period.
3. The Contractor agrees to include all Reseller Agent sales in the periodic utilization reports described above. In addition, the Contractor agrees to include in the utilization report a Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
4. The Contractor agrees to provide with the quarterly utilization report a supplemental report of the credits associated with the units taken back in a format to be mutually agreed to.
5. The utilization reports shall be submitted to the Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.
6. If requested by the Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on a mutually agreed magnetic media in a mutually agreed format. Such requests shall not exceed twelve per year.
7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.
8. The Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

**B. Participating Entity Reports and Fees**

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in a Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no effect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.
2. The Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery method of the report. Methods of delivery may include direct access to Internet or other databases.
3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

**45. Default and Remedies**

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
  1. Consistent nonperformance of contractual requirements; or
  2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure within 30-days notification of the written notice, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
  1. Exercise any remedy provided by law or equity;
  2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
  3. Impose liquidated damages as mutually agreed by the parties, as specified in an Amendment to a Participating Addendum;
  4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations from within the Participating Entity's jurisdiction.

**46. Audits**

- A. The Contractor agrees to assist the Contract Administrator or designee with web site Product and pricing audits based on mutually acceptable procedures.
  1. The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.

- B. Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

47. **Extensions**

If specifically authorized by provision in a Participating Addendum, the Contractor may, at the sole discretion of the Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the State has no liability whatsoever concerning payment for products or services.

48. **Sovereign Immunity**

The State does not waive its sovereign immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

49. **Ownership**

- A. **Ownership of Documents/Copyright.** Each party retains its own pre-existing intellectual property rights, and any enhancements, modifications, derivatives thereto or improvements thereof ("Pre-existing IP"). Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Agreement and paid for by the State shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Agreement. Except as permitted pursuant to Paragraph 49B below, the Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Agreement without the prior written consent of the State.
- B. **Rights, Title and Interest.** Except with respect to Pre-existing IP, all rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trade marks, and service marks in the said documents that the Contractor conceives or originates, either individually or jointly with others, which arise out of the performance of the Agreement and are ordered as a work product, will be the property of the State and are, by the Agreement, assigned to the State along with ownership of any and all copyrights in the copyrightable material. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where applicable, works of authorship created by the Contractor for the State in performance of the Agreement shall be considered "works for hire" as defined in the U.S. Copyright Act. Nothing in this Agreement shall be construed as transferring any right, title, or interest in any of the Contractor's or their third party's confidential information, Pre-existing IP, trademarks, copyrights, intellectual property or other proprietary interest. The State shall grant a perpetual, irrevocable, royalty-free, non-exclusive, non-transferable, sublicensable, worldwide license to use, without restrictions any intellectual property rights or portions thereof for which the State obtains ownership thereof pursuant to this Agreement. Both parties are free to use any ideas, concepts, know-how, or techniques which are developed or provided by the other party or jointly by both parties during a project. Both parties are free to enter into similar agreements with others and to develop and provide Materials and Services which are similar to those provided under this agreement.

**50. Prohibition Against Gratuities**

- A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Agreement if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Agreement, or securing favorable treatment with respect to the award or amendment of this Agreement, or the making of any determinations with respect to the performance of this Agreement.
- B. The Contractor certifies that no elected or appointed official or employee of the State has benefitted or will benefit financially or materially from this Agreement. This Agreement may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

**51. Antitrust**

Except as forbidden by applicable law, the Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

**52. Right to Publish**

- A. Any publicity given to the program, publications or services provided resulting from the Agreement, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Agreement, prior to its approval by the Contract Administrator.
- B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Agreement without the prior written consent of the Agreement Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

**53. Performance While Dispute is Pending**

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

**54. Hazardous Substances**

To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity with Material Safety Data Sheets regarding those substances (including mercury). A copy must be included with each delivery.

**55. Customer Satisfaction/Complaint Resolution**

- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
- B. The Contractor will submit a format for a survey for approval by the Contract Administrator. The Contractor will survey its customers in each Participating State two (2) months prior to the annual meeting with the Contract Administrator.

**56. Value Added Services**

The Contractor is expected to provide such services as installation, training, and software imaging upon request of the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**, including relative costs associated with those services.

**57. E-Rate Program**

The Contractor complies with this requirement through its authorized partner community (Sun's Partner Advantage Program) in the education industry.

The Contractor shall make every effort to continue its involvement in this program and to add products as applicable.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the State of Minnesota, Commissioner of Administration, below.

**1. SUN MICROSYSTEMS, INC.**

The Contractor certifies that the appropriate person(s) have executed this Agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: Kate Z. Russell  
Title: Area Vice President  
Date: 2/13/06

By:  
Title:  
Date:

**2. MATERIALS MANAGEMENT DIVISION**

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopschke  
Title: Acquisition Management Specialist

Date: 2/14/06

**3. COMMISSIONER OF ADMINISTRATION**

Or delegated representative.

By: [Signature]  
Date: 14 FEB 06

## EXHIBIT A - ADDITIONAL WARRANTIES

### A) PRODUCT WARRANTIES

- 1.1 Warranty.** Sun warrants that all Equipment as at the date of delivery will be free from material defects in materials and workmanship for the period shown on the web-page at <http://www.sun.com/service/support/warranty> ("the Warranty Web Page") (a hard copy of which is available on request). Company may review Sun's warranty programs and related procedural details at the Warranty Web Page. Sun furthermore warrants that Software listed on the Warranty Web Page as at the date of delivery, for the period shown on the Warranty Web Page, will contain the features described in the applicable user's manual, as it exists at the date of delivery to Company. Otherwise Software is provided "AS IS".
- 1.2 Changes to Warranty Web Page.** Any changes to the warranty details specified on the Warranty Web Page from time to time will not apply to Products ordered prior to such change.
- 1.3 Exclusive remedy.** Company's sole and exclusive remedy and Sun's entire liability for breach of the above warranty will be: (a) the repair or, at Sun's option and expense, replacement of defective Equipment; and (b) the provision of Software support as shown on the Warranty Web Page. Parts or components which are replaced under applicable warranty may not be new. Title in all defective parts which are removed from Equipment under applicable warranty shall transfer back to Sun.
- 1.4 Products excluded from warranty.** No warranty will apply to any Product which has been:
- (a) modified, altered or adapted without Sun's written consent;
  - (b) maltreated or used in a manner other than in accordance with the relevant manual;
  - © repaired by any third party in a manner which fails to meet Sun's quality standards;
  - (d) improperly installed by any party other than Sun;
  - (e) used with equipment or software not covered by the warranty, to the extent that the problems are attributable to such use; or
  - (f) purchased from any entity other than Sun or a Sun authorized reseller.

### B) SERVICE WARRANTIES

- 1.1 Warranty.** Sun warrants that Services will be performed in a good and workmanlike manner.
- 1.2 Exclusive remedy.** Company's sole and exclusive remedy and Sun's entire liability for breach of the above warranty will be reperformance of Services.
- 1.3 Claims.** Any claim for breach of the above warranty must be made in writing and notified to Sun within 90 days of performance of the Services at issue.

### WARRANTY

**NO IMPLIED WARRANTIES.** Except as specified in this Exhibit, all express or implied conditions, representations and warranties, including any implied warranty or condition of merchantability, satisfactory quality, fitness for a particular purpose and non-infringement, are hereby excluded to the maximum extent permitted by law.

Upgrades to Sun's basic warranty coverage are provided under the SunSpectrum Service Plans. The following table summarizes the service plans provided through a SunSpectrum Support Agreement. The SunSpectrum Service Plans offer four coverage levels that provide technical support, on-site service and other services. Prices for these services are provided on Sun's Products and Services Schedule. Complete details of the Sun service support plans can be found on the Sun Services website ([www.sun.com/services/](http://www.sun.com/services/)).

### **SunSpectrum Service Plan Table**

	Platinum Mission Critical	Gold Business Critical	Silver Basic Support	Bronze Self Maintenance
On-Demand Solaris Updates	Yes	Yes	Yes	Yes
Hardware Service Coverage*	24/7 2 hour On-site Service*	8-8, Monday- Friday 4 hour On-site Service*	8-5, Monday-Friday 4 hour On-site Service*	Replacement Parts – 2nd Business day*
Telephone and Online Technical Support	24/7 Live Transfer	24/7 Live Transfer	8-8, Monday-Friday Live Transfer	8-5, Monday-Friday 4 Hour Response
Support Notification Services	Yes	Yes	Yes	Yes
Online System Admin Resources	Yes	Yes	Yes	Yes
On-demand Solaris Updates	Yes	Yes	Yes	Yes
SunSpectrum eLearning Library	Yes	Yes	Yes	Yes
One-Stop Interoperability Assistance	Yes	Yes	No	No
System Health Check Subscription	Yes	Yes	No	No

Important Note:

*\*If necessary modify table to reflect local coverage. Refer to <http://www.sun.com/service/support/localinfo.html> for additional local coverage information.*

## EXHIBIT B - COMPLAINT RESOLUTION

Sun's formal service escalation procedure is described in detail below. It is broken into four complaint categories: Service, Billing, Equipment and Order, and Issues.

### A. Service Complaint Resolution Procedures

All service issues related to Sun Products and Support are handled directly by Sun. The following outlines how to initiate a support request and details the processes that are followed depending on the level of service support contracted with Sun.

To ensure consistent high-quality support, all support requests, problems and complaints can be coordinated through a toll-free call (1-800-USA-4SUN) to the Sun Services Customer Care Center (CCC) or through the Online Support Center (OSC) at: <https://osc-amer.sun.com/>. The Sun Customer Care Center takes the initial call for service. Should this problem or complain fail to be resolved it is forwarded to the Sun Escalation Center.

#### ***Sun Escalation Center***

Escalations at Sun are handled based on a combination of rules, service levels and case-by-case severity. The process is designed to match the appropriate level of response to the customer's particular situation. Depending on the service level contracted by the customer (e.g., SunSpectrum Platinum, Gold or Silver service levels), customers benefit from an escalation process whereby complex or urgent problems are more rapidly escalated to Sun's senior support engineers. See Binder 2 Attachment C, "Sun Marketing Information" for service product descriptions for warranty and post-warranty support services.

An overview of the process:

- WSCA's service request is recorded and assigned to the appropriate Sun technical specialist.
- To maintain consistency of service and help ensure quality, the assigned specialist is given a limited period of time to isolate the exact problem and reach resolution.
- If resolution is not achieved within the set period, WSCA's case is automatically escalated to a senior support engineer for resolution.
- In the unlikely event there is a need for further escalation, the case is sent to a unique team of developers and engineers assembled specifically for WSCA's case in order to reach resolution.
- At the request of the Primary WSCA Account Manager, the Service Account Manager can compile a call history from the escalation tools maintained by the Customer Care Center and the field organizations. The Service Account Manager will develop a post-mortem report detailing actions taken to resolve the issue to the customer's satisfaction. Under Platinum or Gold service, and at the request of WSCA, the Service Account Manager will visit the customer site to discuss and evaluate the actions taken during the service call to define ways to improve future service delivery. WSCA Members who have subscribed to either Gold or Platinum service support can expect the following additional services: STAR Escalation Team and Time Based Notification Services.

#### **B. Billing Complaints Resolution Procedures**

All Sun inquiries will include the name of a Sun Financial Representative and phone number. The Sun Financial Representative will be the initial point of contact to resolve any billing complaints.

If the Sun Financial Representative is unable to resolve the billing complaint, then the WSCA Member should contact their Sun Account Manager. If at this time, the WSCA member feels the situation warrants it, the matter is escalated to the WSCA Primary Account Manager for resolution.

#### **C. Order and Equipment Complaint Issues**

All order and equipment issues can be resolved by calling Sun's Customer Services Support representative at 1.800.USA4Sun and enter prompt 5, then prompt 3, for State and Local Support Representative or prompt 4 for a Sun Educational Representative. These customer support representatives have processes and procedures in place to respond to customer issues within 24 hrs. If unsatisfied with the Customer Support Representative's response, a customer can escalate either to the Customer Support Team Lead or directly to the WSCA program office for resolution.

It is important to note that the "entry point" for complaint resolution may be different depending on whether the WSCA member is being serviced directly through Sun or being serviced indirectly through a Sun Value Added Reseller (VAR); however, if the issue needs to be elevated, final resolution will always be resolved by Sun.

#### **D. Issue Complaints Procedures**

In the event of a customer complaint issue, the customer's first point of contact is normally the local Sun Account Manager. This individual is empowered to engage the necessary resources in the local service area. Most issues are resolved readily at the local level. If necessary, the situation is elevated to executive management through the WSCA Program Office.

## **EXHIBIT C - VALUE ADDED SERVICES**

### **A. Sun Installation Services**

Sun Services can provide installation services to help WSCA customers quickly and effectively install hardware, build interfaces to other systems, consolidate server workloads, and migrate applications and data to a new environment. Detailed Installation Services descriptions can be found at <http://www.sun.com/service/consulting/installintegrate/index.html>.

### **B. Customer Ready Systems (CRS)**

Sun Customer Ready Systems (CRS) program helps with design validation, integration and testing of Sun and third-party components. These integrated systems leave the Sun factory ready-to-deploy, allowing you to get more done with less risk, less overhead, while speeding deployments and the return on IT assets. The CRS program delivers solutions built in Sun's factories based on customer specifications. Additionally, the Sun CRS program offers a broad range of services to deliver complete life cycle management of the infrastructure.

### **C. Upgrade Assistance Program (UAP)**

UAP allows the customer to trade their system in at any time \*\* so they get investment protection throughout the life cycle of the computing asset. UAP also provides value when moving from non-Sun equipment to the latest Sun products. The process is fast and simple. For example, Sun is offering a current promotion until March 2006 for an extra 20% off an Opteron X2100, X4100, or X4200 when the customer trades in either a Dell, IBM, or HP x86 system.

\*\* System must be owned by original purchaser for a minimum of ninety days

### **D. Sun Educational Services**

The focus of Sun Educational Services is to enable an enterprise to stay ahead of constantly changing technologies through the education and training of an enterprise's most valuable asset, its people. Over 250,000 students each year are trained by Sun and its authorized centers through Web-based courses and at over 250 training sites located in more than 60 countries.

Sun Educational Services provides an extensive array of fixed price, customized and hourly rate courses and services. Sun Educational Services training methodologies are built around AIM, assessing the staff in an IT department, building a comprehensive training solution, implementing the delivery of those solutions and managing to roll out of the solution. All training solutions are built on these principals to ensure successful knowledge transfer.

Industry-standard Sun certifications are available for Java, Sun Java System , Solaris, and Network Administration. Delivery options for Sun training include; instructor-led, virtual training, live labs, web-based, CD-ROM, seminar and mentoring.

Training categories include, but are not limited to; Sun Java System middleware, Sun Java System Studio, Solaris OE development and administration. Web services, XML, Perl, Java technology, networking, security, storage, and professional development. When looking for the best in Sun Education, please engage the organization that writes the courses, Sun Educational Services.



**WSCA/NASPO Contract Administration**

112 Administration Building, 50 Sherburne Avenue, St. Paul, MN 55155

Fax: 651.297.3996, TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

**WSCA-NASPO COMPUTER CONTRACTS**

**BULLETIN NO. 8**

**Sun Microsystems Award**

Sun Microsystems has been awarded a Master Price Agreement for Bands 1 – Servers; 2 – Desktops; and 4 – Auxiliary Storage. The MPA is based on the Contractor's responses to the RFP that opened on November 7, 2005, which expanded the unit/configuration dollar cap in these Bands.

The award information, including the MPA, model PA, and approved website address has been added to our website.

If you have any questions, please e-mail them to one of us:

**Bernadette Kopscihke - Contract Administrator**

E-Mail: [bernie.kopischke@state.mn.us](mailto:bernie.kopischke@state.mn.us)

**Kate Offerdal - Contract Analyst**

E-Mail: [kate.offerdahl@state.mn.us](mailto:kate.offerdahl@state.mn.us)

**Paul Stembler - Procurement Manager**

E-Mail: [paul.stembler@state.mn.us](mailto:paul.stembler@state.mn.us)

## Request for Proposal

Solicitation Number: JG6901

Due Date: 11/07/05 @ 2:30 p.m.  
CST

Date Sent: 09/28/05



### WSCA Contract

#### NOTICE

The State of Utah gives public notice of the State's intent to participate with this multi-state RFP in conjunction with the State of Minnesota, Western States Contracting Alliance (WSCA), and the National Association of State Procurement Officials (NASPO).

No proposals should be sent to the State of Utah in response to this notice. The State of Utah solicitation number JG6901 is for Utah's tracking purposes only. All references by vendors, inquiries, or their RFP response should include the Minnesota RFP title and reference number and should be directed to the State of Minnesota.

**REFERENCE NUMBER: P7110**

**CONTRACTING AGENCY:** State of Minnesota Admin/Materials Management Division

**TITLE:** NOTICE OF WSCA/NASPO CONTRACTS FOR EXPANSION OF MID-RANGE SERVER, WORKSTATION, AND SERVER BANDS

**RFP DOCUMENT DOWNLOAD:** Please visit the following web link to obtain a copy of the request for proposal. <http://www.mmd.admin.state.mn.us/process/admin/postings.asp>

**RESPONSE TO THIS SOLICITATION IS DUE NO LATER THAN 11/07/05 AT 2:30 PM CST**

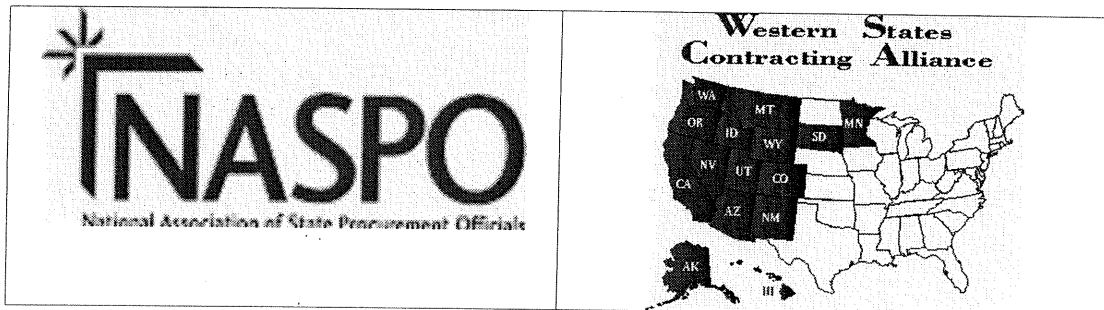
The Minnesota Department of Administration

Materials  
Division

Management



On behalf of the  
STATE OF MINNESOTA  
and in Association with



REISSUE OF  
THE  
REQUEST FOR PROPOSALS  
FROM

MANUFACTURERS OF  
PERSONAL COMPUTER EQUIPMENT  
TO EXPAND THE SCOPE OF BANDS 1, 2, & 4

ISSUE DATE: September 23, 2005

RESPONSE DUE DATE AND TIME:

November 7, 2005, 2:30 p.m. CST

## **I. INTRODUCTION**

- A. INTENT AND PURPOSE OF THIS REQUEST FOR PROPOSALS
- B. GENERAL GUIDANCE AND EXPECTATIONS FOR THIS REQUEST FOR PROPOSALS
- C. SUMMARY SCOPE OF WORK
- D. SCOPE OF PROCUREMENT
- E. CONTRACT ADMINISTRATOR AND PROCUREMENT MANAGER
- F. DEFINITION OF TERMINOLOGY
- G. BACKGROUND INFORMATION

## **II. CONDITIONS GOVERNING THE PROCUREMENT**

- A. SEQUENCE OF EVENTS
- B. EXPLANATION OF EVENTS
- C. GENERAL REQUIREMENTS

## **III. RESPONSE FORMAT AND ORGANIZATION**

- A. NUMBER OF RESPONSES
- B. NUMBER OF COPIES
- C. PROPOSAL FORMAT
  - 1. Proposal Organization
  - 2. Letter of Transmittal

## **IV. SPECIFICATIONS**

- A. INFORMATION
- B. TECHNICAL SPECIFICATIONS

## **V. EVALUATION**

- A. EVALUATION POINT SUMMARY
- B. EVALUATION FACTORS
- C. EVALUATION PROCESS

<b>APPENDIX A</b>	<b>Master Price Agreement Terms And Conditions</b>
<b>APPENDIX B</b>	<b>Pricing Configuration Forms</b>
<b>APPENDIX C</b>	<b>RFP Question Form</b>
<b>APPENDIX D</b>	<b>State of Minnesota Affirmative Action Data Page</b>
<b>APPENDIX E</b>	<b>State of Minnesota Trade Secret Information Form</b>
<b>APPENDIX F</b>	<b>State of Minnesota Affidavit of Non-Collusion</b>
<b>APPENDIX G</b>	<b>State of Minnesota Environmental Report</b>
<b>APPENDIX H</b>	<b>State of Minnesota Taxpayer Identification</b>

## I. INTRODUCTION

### A. INTENT AND PURPOSE OF THIS REQUEST FOR PROPOSALS (RFP)

The Materials Management Division (MMD) of the Minnesota Department of Administration (Admin) is requesting proposals on behalf of the State of Minnesota, the Western States Contracting Alliance (WSCA), and the National Association of State Procurement Officials (NASPO) from manufacturers of computer equipment that would have an upper limit of \$100,000 on the individual unit/configuration.

**WSCA/NASPO and MMD are reissuing a portion of the original RFP issued in February, 2004, due largely to the fact that when the bands were originally defined, we wanted to carefully control the items and configurations offered and therefore put an upper limit of \$50,000 on an individual unit/configuration. However, a middle ground alternative was left without support. This middle ground is not high-end servers intended for statewide or nationwide or worldwide operations and applications, but mid-range servers, high-end workstations, and some larger storage solutions that are becoming more common and more useful in office/division/institutional setting.**

**Therefore, this RFP will result in the expansion of the following bands that were part of the original RFP/Contracts, as detailed later in this RFP:**

**Band 1 - Servers, to include pricing configurations for mid-range servers between \$50,000 and \$100,000, including file and print servers.**

**Band 2 - Desktop, to include high-end workstations between \$50,000 and \$100,000.**

**Band 4 - Auxiliary Storage, to include pricing configurations for mid-range storage solutions between \$50,000 and \$100,000, including NAS, SAN, CAS, and CNS.**

Contractors must provide warranty and maintenance services on **ALL** equipment that is offered and purchased through the resulting contracts. Delivery, support, warranty, and maintenance may be provided by the contract awardees using subcontractors. The contract awardee is still responsible for the timeliness and quality of all services provided by individual subcontractors. Subcontractor participation will be governed by individual Participating State procurement officials, who have the sole discretion to determine if they will accept services from a subcontractor. Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the resulting contracts.

"Educational" offerings, including special purpose educational software and hardware configurations included as part of the original purchase, are included in this RFP. The specific rules and restrictions of these "educational" offerings must be detailed in the response.

This Request for Proposals **IS NOT** for a one-stop, meet-any-and-all requirements contract, nor is it for the purchase of software or peripherals **NOT** included as part of an equipment purchase under a resulting contract. Factory warranted upgrades are acceptable products, at the option of individual Participating State directors or entities. Additionally, this Request for Proposals **IS NOT** a reseller contract. It is the intent of this RFP to contract with equipment manufacturers for the **PURCHASE** of the equipment approved for sale under the contract. Each state represented by WSCA or NASPO that chooses to participate in this contract independently has the option of contracting for a one-stop shop contract, contracts with resellers or any other kind of PC or computer goods or services.

It is the further intent of this RFP that leasing or rental agreements **ARE NOT** included in the Master Price Agreements. Each Participating Entity is allowed to negotiate leasing or rental agreements into their Participating Addendum, if they have the legal authority to enter into these types of agreements without going through a competitive process.

Potential responders should be aware of several limitations and boundaries intended by the WSCA Directors in supporting the issuing of this RFP.

- The resulting contracts are **NOT** for the offer and purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations should not exceed \$100,000 each. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration.
  - It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each, or \$50,000 each. Contractors must be willing to comply with these restrictions by agreeing to supply product in those price ranges only.
  - Individual Participating States may set state specific limits in a participating addendum above the \$100,000, with the prior approval of the WSCA Directors.
- Contract awardees should assume that the pricing accepted reflects individual or small quantity purchases. If a Participating State, or a group of Participating States or entities within a state(s), chooses to focus purchases on a "state configuration," this configuration will be defined and then competed within the pool of contract awardees for specific pricing. These strategic competitions that exceed \$500,000 in total value must be reported to the MMD Contract Manager by the each Contractors participating in the competition.
- MMD and the WSCA Directors acknowledge that individual units and configurations offered in 2005 will evolve during the potential life of the resulting contracts. It is our intent to adhere to the following processes in dealing with

this change, evolution.

Substitution of units/configurations: MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting contracts. Substitution of different units and configurations will be permitted with the prior written approval of the Contract Administrator. This substitution is at the sole discretion of the Contract Administrator, subject only to review and approval of the Procurement Manager.

Addition of units/configurations: MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units may be permitted, with the prior approval of the Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the Contract Administrator, subject only to review and approval of the WSCA Directors.

## **B. GENERAL GUIDANCE AND EXPECTATIONS FOR THIS REQUEST FOR PROPOSALS (RFP)**

To qualify for this solicitation, Responders must, at a minimum, manufacture the equipment being proposed.

If the responder is not the manufacturer of the equipment, then the responder **MUST** have the legal documentation necessary to show that the RESPONDER is directly responsible and liable for the warranty and maintenance on ANY product they are proposing under this solicitation.

Being "directly responsible and liable for the warranty and maintenance" means that the RESPONDER must provide warranty and maintenance call numbers, accept, process, and respond to those calls, and be legally liable for and pay for those warranty and maintenance (under warranty) activities.

"Proof" of this relationship could be provided by a binding agreement between the RESPONDER and some other entity, outlining this relationship and assigning required responsibilities. "Proof" must be submitted with the RESPONDER's proposal. The agreement between the RESPONDER and the manufacturer must be valid for the period from the due date of the responses, November 7, 2005, through August, 31, 2009.

This relationship is NOT, call "them", it is call US (the responder) and we will fix it.

In addition, each Responder must propose a Takeback Program as specified in Section IV, Paragraph B14.

Contractors who were awarded a Contract based on the RFP from Manufacturers of Personal Computer Equipment and Related Devices that was issued on February 9, 2004, need not respond to all of the requested information in Section IV. Specifications. These Contractors need only to respond to Section IV, Items: 2. Products and Services Overview, paragraph a. Breadth of Offer, 8. Pricing Level and Volume Discount Guarantees, 9. Products and Services Schedule, 10. Entire Proposal in electronic Format, and 14. Cost; and all of Section III. Response Format and Organization. If any of these Contractors are successful awardees in this RFP, the Contractor's Master Price Agreement will be amended to include these new offerings.

The primary objective is to establish permissive Master Price Agreement(s) with Contractors who are able to provide middle ground of solutions such as mid-range servers, high-end workstations, and some larger storage solutions so that Purchasing Entities may order product(s) appropriate for their needs. This solicitation is focused on the desktop and office/work group as opposed to the enterprise.

The second objective is to obtain greater volume-based price discounts resulting from the administrative savings that the Contractor(s) will accrue from the maintenance of a single, comprehensive Master Price Agreement for multiple governmental jurisdictions.

All NASPO members in good standing may use the resulting Master Price Agreements. In addition, the WSCA directors may authorize state and local governmental entities throughout the nation the use of the Master Price Agreements, subject to verification from the individual State Procurement Director and local statutory provisions allow for use of these types of agreements.

This procurement will result in a **LIMITED** multiple source award(s).

#### **C. SUMMARY SCOPE OF WORK**

The awarded Contractor(s), or its approved subcontractors, shall accept purchase orders and payments from and deliver products and services to authorized Purchasing Entities. Subcontractor participation is governed by the individual Participating State or Participating Entity procurement official. Contractors are required to provide warranty and maintenance services on equipment that is purchased.

#### **D. SCOPE OF PROCUREMENT**

The Master Price Agreements shall become effective on or about December 1, 2005 and will be in effect until August 31, 2007. The MMD reserves the option of extending the agreements on an annual basis for two (2) additional one-year terms or portions thereof.

It is anticipated that Contractor(s) will have make websites available to communicate with Participating Entities about upcoming opportunities. NO ORDERS may be issued or accepted for delivery under the new Master Price Agreements until the new contracts

become effective, which will occur when the new Contractor's website is approved; or when the current Master Price Agreements are amended, which will occur when the specific product packages have been approved to be added to the current website.

The scope of procurement includes the expanded Bands as identified elsewhere in this RFP. Contractors shall not provide any form of application development services or general consulting professional services under the terms and conditions of the Master Price Agreement.

#### **E. CONTRACT ADMINISTRATOR AND PROCUREMENT MANAGER**

The Materials Management Division, of the Minnesota Department of Administration, has designated a Contract Administrator and a Procurement Manager who are responsible for the conduct of this procurement and management of the contracts.

Contract Administrator (responsible for managing the contracts, relationships with Purchasing Entities and all actions related to the current Master Price Agreements and those that will result from this RFP)

Name: Bernadette Kopischke  
Title: WSCA/NASPO Contract Administrator  
  
Agency Name: Minnesota Department of Administration  
Materials Management Division  
  
Address: 112 Administration Building  
50 Sherburne Avenue  
St. Paul, MN 55155  
  
Telephone: 651.201.2450  
Fax Number: 651.297.3996  
TTY: MN Relay Service 1.800.627.3529  
E-mail: [Bernie.Kopischke@State.Mn.US](mailto:Bernie.Kopischke@State.Mn.US)

Procurement Manager (Minnesota's representative to WSCA Board of Directors and responsible for managing relationships with WSCA, NASPO, and Participating States/Participating Entities)

Name: Paul Stembler  
Title: MMCAP Manager/Assistant Director  
  
Agency Name: Minnesota Department of Administration  
Materials Management Division  
  
Address: 112 Administration Building  
50 Sherburne Avenue

St. Paul, MN 55155

Telephone: 651.296.0498  
Fax Number: 651.297.3996  
TTY: MN Relay Service 1.800.627.3529  
E-mail: [Paul.Stembler@State.Mn.US](mailto:Paul.Stembler@State.Mn.US)

## F. DEFINITION OF TERMINOLOGY

This section contains definitions that are used throughout this procurement document, including appropriate abbreviations.

**“Configuration”** in most instances in this document means a total system configuration. This may include more than one model or part number (or SKU), or a combination of hardware, software, and configuring of the system to make the system work.

**“Contract”** means an agreement for the procurement of items of tangible personal property or services.

**“Contract Administrator”** means the person or designee authorized by MMD to manage the Master Price Agreements, relationships with Purchasing Entities, and all actions related to the current Master Price Agreements and those that will result from this RFP.

**“Contractor”** shall mean successful Responder who enters into a binding Master Price Agreement.

**“Consumables”** that are uniquely required for the operation of Equipment offered or supplied are included -- printer cartridges, batteries, etc. Consumables such as magnetic media, paper and generally available office supplies are excluded.

**“Determination”** means the written documentation of a decision of the Contract Administrator or the Procurement Manager including findings of fact to support a decision. A determination becomes part of the procurement file to which it pertains.

**“Desirable”** The terms “may” and “should” identify a desirable or discretionary item or factor.

**“E-Rate”** is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

**“Energy Star®”** is a voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes identification of energy efficient computers easy by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. Energy Star qualified

computers and monitors automatically power down to 15 watts or less when not in use and may actually last longer than conventional products because they spend a large portion of time in a low-power sleep mode. For additional information on the Energy Star program, including product specifications and a list of qualifying products, visit the Energy Star website at <http://www.energystar.gov>.

**“Equipment”** means workstations, desktops, servers, and storage solutions, including upgrade components such as memory, storage drives, and spare parts.

**“Evaluation Committee”** means a body approved by the WSCA Directors and designated by the MMD to perform the evaluation of Responders’ proposals.

**“Finalist”** is defined as an Responder who meets all the mandatory specifications of the Request for Proposal and whose score on evaluation factors is sufficiently high enough to qualify that Responder for a positive recommendation by the Evaluation Committee.

**“Intent to Participate”** means the form executed by a State Procurement Official that describes the cooperative procurement and signifies the State’s willingness to enter into the cooperative procurement. For this solicitation, Participating States shall complete a Participating Addendum.

**“ISO 14001”** is the conformance standard within the family of ISO 14000 documents developed by the International Organization for Standardization (ISO) in Geneva, Switzerland. Similar in structure to the ISO 9000 quality management system standard, ISO 14001 outlines key requirements companies should comply with in order to operate in an environmentally responsible manner. Utilizing ISO 14001, companies can merge environmental programs into one coherent system to efficiently manage all environmental activities. In short, ISO 14001 provides organizations with a way to demonstrate to their customers that their environmental processes and impact are effectively managed, continually improving, and part of the corporate management system. For more information, please refer to [www.iso.org](http://www.iso.org).

**“Lead State”** means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this solicitation, the Lead State is Minnesota.

**“Local-Area-Network” (“LAN”)** refers to a high-speed, low-error data network covering a relatively small geographic area. LANs connect workstations, peripherals, terminals, and other devices in a single building or other geographically limited area. Wireless transmission components and security devices are included. Cable and components required for the installation and operation of a LAN are included if installation services are purchased. A third party may manufacture LAN hardware and software. Public data, voice or video transport services are excluded as well as hardware and software required in supporting a WAN.

**“Mandatory”** The terms “must” and “shall” identify a mandatory item or factor. **Failure to**

meet a mandatory item or factor will result in the rejection of the Responder's proposal.

**"Manufacturer"** means the company that designs, assembles, and markets the computer and audio-visual equipment referenced in this RFP. The manufacturer's name(s) shall appear on the computer equipment. **The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.**

**"Master Price Agreement"** means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of Contractor's products and/or services by Purchasing Entities. The "Master Price Agreement" is a permissive price agreement. In order for a Purchasing Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or a Participating Entity.

**"Materials Management Division" or "MMD"** means the procurement official for the State of Minnesota or a designated representative.

**"NASPO"** means the National Association of State Procurement Officials

**"Participating Addendum" or "Participating Addenda"** means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the Price Agreement for the State or political subdivision concerned; e.g., ordering procedures specific to a State or political subdivision, and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the Master Price Agreement. Additional terms and conditions may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of the master price agreement. Contractor(s) shall submit a copy of all proposed participating addenda to the Contract Administrator PRIOR to the Contractor executing the participating addendum.

**"Participating State" or "Participating Entity"** means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, or who subsequently signs a Participating Addendum where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement through the execution of a participating addendum.

**"Permissive Price Agreement"** means that placement of orders through the price agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the price agreement without using statutory or regulatory procedures (e.g., invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the price agreement as long as applicable procurement statutes and rules are

followed.

**“Price Agreement”** means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

**“Procurement Manager”** means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating Entities.

**“Product(s)”** means personal computer equipment, servers, and Network Storage devices, but not unrelated services. **The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.**

**“Products and Services Schedule”** or **“PSS”** refers to a complete list, grouped by major product and/or service categories, of the Products and services provided by the Contractor that consists of an item number, item description and the Purchasing Entity's price for each Product or Service. Once approved by the Contract Administrator, all such Products and services shall be listed on a Contractor-supplied web site accessed via a URL. **The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.**

**“Proposal”** or **“Bid”** or **“Offer”** generally refers to the documents submitted in response to a solicitation, whether denominated as an invitation to bid, invitation for bid, request for proposal, or otherwise. **“Responder”** or **“Bidder”** similarly refers to the person, company, or other entity submitting the proposal or bid that constitutes an offer capable of acceptance, regardless of the solicitation method used. This request for proposal will use the terms **“Proposal”** and **“Responder”**.

**“Purchase Order”** means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

**“Purchasing Entity”** means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a contract for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

**“Qualified Responder”** means a Responder who submits a responsive proposal and who has furnished, when required, information and data to prove that its financial resources, production or service facilities, personnel, service reputation, and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.

**“Request for Proposals”** or **“RFP”** means all documents, including those attached or

incorporated by reference, used for soliciting proposals.

**“Responder”** is a Manufacturer who chooses to submit a proposal.

**“Responsive Proposal”** means a proposal that conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to, price, quality, quantity or delivery requirements.

**“Services”** are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/helpdesk, and any other directly related technical support service required for the effective operation of a product offered or supplied. *General consulting and all forms of application development and programming services are excluded.* **The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.**

**“Servicing Subcontractor/Subcontractor/Reseller Agent”** means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor’s Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided in a Participating Addendum. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. **The Contractor(s) actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor’s providing warranty service and maintenance for equipment on a Master Price Agreement as well as the Takeback Program.**

**“Software”** means machine-readable object code instructions that are preloaded on equipment. The term “Software” applies to all parts of software and documentation, including new releases, updates, and modifications of software. For Software, the term “purchase” means “license”. Contractor shall deliver applicable licenses with the Software.

**“State Procurement Official”** means the director of the central purchasing authority of a state.

**“Takeback Program”** means the Contractor process for accepting the return of the equipment or other products at the end of life—as determined by the State utilizing the Master Price Agreement.

**"Universal Resource Locator" or "URL"** means a standardized addressing scheme for accessing hypertext documents and other services using the WWW or another browser.

**"WSCA"** means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

## **G. BACKGROUND INFORMATION**

The National Association of State Procurement Officials (NASPO) was formally established on January 29, 1947, in Chicago, Illinois.

NASPO is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. It is made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia and the territories of the United States. NASPO is an organization through which the member purchasing officials provide leadership in professional public purchasing, improve the quality of purchasing and procurement, exchange information, and cooperate to attain greater efficiency and economy.

WSCA was formed in October, 1993. The purposes of WSCA are to establish the means by which participating states may join together in cooperative multi-state contracting, to ensure the commitment of each participating state, and to provide regular and ongoing assistance to participating states in researching, developing, and administering procurement and contractual specifications and requirements. WSCA maintains a cooperative relationship with the National Association of State Purchasing Officials (NASPO). The mission of WSCA is to implement multi-state contracts to achieve cost-effective and efficient acquisition of quality products and services.

WSCA membership consists of the principal procurement official that heads the state central procurement organization, or designee for that state, from the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

The following named states have signed an Intent to Participate Form or have requested to be named in this RFP as a potential user of the resulting Master Price Agreements: Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Iowa, Louisiana, Kansas, Massachusetts, Minnesota, Missouri, Nevada, New Hampshire, New Jersey, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Utah, Washington, Wisconsin, and Wyoming.

## **II. CONDITIONS GOVERNING THE PROCUREMENT**

This section of the RFP contains the schedule for the procurement and describes the major

procurement events as well as the conditions governing the procurement.

#### A. SEQUENCE OF EVENTS

The Contract Administrator will make every effort to adhere to the following schedule:

	Action	Responsibility	Date
1	Issue of RFP	MMD - Contract Administrator	Sept. 23, 2005
2	<b>Deadline for Submission of Written Questions</b>	<b>Potential Responders</b>	<b>2:30 p.m., CST, Oct. 14, 2005</b>
3	Responses to Written Questions/RFP Addenda (if required)	MMD - Contract Administrator	Oct. 21, 2005
4	<b>Submission of Proposals to Materials Management Division</b>	<b>Potential Responders</b>	<b>2:30 p.m., CST, Nov. 7, 2005</b>
5	<b>Submission of Proposals to Evaluation Committee</b>	<b>Potential Responders</b>	Nov. 8, 2005
6	Proposal Evaluation	Evaluation Committee	Nov. 10, 2005 thru Nov. 18, 2005
7	Selection of Finalists	Evaluation Committee	Nov. 21, 2005
8	Presentation of Award Recommendations to WSCA Directors	MMD - Procurement Manager	Nov. 21, 2005
9	<b>Contract Negotiations with Finalists</b>	<b>MMD and Finalists</b>	<b>Nov. 22, 2005 thru Nov. 30, 2005</b>
10	Final Contract Award Notifications	MMD - Contract Administrator	Nov. 30, 2005
11	<b>Sign Contracts</b>	<b>MMD and Finalists</b>	<b>Dec. 1, 2005</b>

#### B. EXPLANATION OF EVENTS

The following paragraphs describe the activities listed in the sequence of events shown in Section II, Paragraph A.

##### 1. Issue of RFP

The Materials Management Division of the Minnesota Department of Administration is issuing this RFP.

##### 2. Deadline to Submit Written Questions

Potential Responders may submit written questions as to the intent or clarity of this RFP until 2:30 P.M. (CST) on the date indicated in Section II, Paragraph A. All written

questions must be submitted to the Contract Administrator (See Section I, Paragraph D) by e-mail, with the questions contained in an attached Microsoft Word document, refer to **Appendix C** for the form to use to submit questions. The Contract Administrator will not respond to questions submitted in any other manner, format, or received after the submittal date

**3. Response to Written Questions/RFP Amendments**

Written responses to written questions and any RFP amendments will be posted on the MMD website at the following URL:

<http://www.mmd.admin.state.mn.us/process/admin/postings.asp>

**4. Submission of Proposals**

Responders shall submit an original copy of their proposals, **signed in ink**, by a designated representative authorized by the firm or company to execute contracts on its behalf. Signatures can be in either blue or black ink, but our experience suggests that blue ink is a better choice.

Responders should also submit as part of the proposal, disks or CDs that are a Word or WordPerfect document containing the complete proposal (including Pricing Configuration Forms and PSS). This copy will be used to more efficiently create and share documents in the future. By submitting the disks or CDs, the Responder is certifying that the document is an exact, complete, full copy of the proposal actually physically submitted in response to this Request for Proposals.

**THE ORIGINAL, TWO (2) PAPER COPIES, AND TWO SETS OF THE ELECTRONIC COPIES OF THE RESPONDER'S PROPOSALS MUST BE RECEIVED BY THE MATERIALS MANAGEMENT DIVISION NO LATER THAN 2:30 P.M. CENTRAL STANDARD TIME ON November 7, 2005**

**PROPOSALS RECEIVED AFTER THIS DEADLINE WILL NOT BE CONSIDERED.**

The date and time will be recorded on each proposal and an official log will be kept and made available upon request.

Proposals must be delivered to the Materials Management Division at the following address:

**Materials Management Division  
WSCA RFP RE-SOLICITATION TO EXPAND THE SCOPE OF  
SPECIFIC BANDS  
112 Administration Building  
50 Sherburne Avenue  
St. Paul, MN 55155**

Proposals must be sealed and labeled as follows:

Original, two paper copies, and two electronic copies (including pricing configurations) of the Responder's proposals in a sealed envelope or container clearly marked on the outside: WSCA RFP RE-SOLICITATION TO EXPAND THE SCOPE OF SPECIFIC BANDS.

Original and two paper copies of Responder's pricing configuration forms sealed in a SEPARATE envelope or container WITHIN the proposal sealed envelope or container clearly marked on the outside: WSCA RFP RE-SOLICITATION TO EXPAND THE SCOPE OF SPECIFIC BANDS.

### **Proposals Submitted By Facsimile Will Not Be Accepted**

Additionally, two identical copies of each new RESPONDER'S SEALED PROPOSAL - ***not the Pricing Configuration Forms*** - must be delivered to each of the individual's listed below before the end of the business day (in the appropriate time zone) on November 8, 2005, to facilitate evaluation of the responses. Current Contractors do not need to comply with this requirement; only those Responders who do not currently hold a WSCA Master Price Agreement for Computer Equipment must delivery the aforementioned copies of their proposals to the following:

Mr. Jason Soza  
Contracting Officer  
State of Alaska  
333 Willoughby, 7th Fl  
Juneau, Alaska 99811

Ms. Felicia Sonnier  
Division of Administration  
Office of State Purchasing  
State of Louisiana  
1201 North 3rd Street, Ste. 2-160  
Baton Rouge, Louisiana 70802

Mr. Daniel Miller  
IT Procurement Specialist  
Enterprice Procurement Services Division  
Arizona Department of Administration  
100 North 15th Avenue, #104  
Phoenix, Arizona 85007

Mr. Robert Oliver  
State Procurement Bureau  
Department of Administration  
State of Montana  
125 North Roberts Street  
Room 165, Mitchell Bldg.  
Helena, Montana, 59620

Ms. Robin Rogers  
Purchasing Team Leader  
State of Arkansas  
1509 West 7th Street  
Little Rock, Arkansas 72201

Ms. Ruth Gray, Buyer  
State of Nebraska  
DAS-Material Division, Purchasing Bureau  
301 Centennial Mal South, Mall Level  
Lincoln, Nebraska 68509-4847

Mr. David Candler  
Manager, Contract Administration  
State of Georgia  
100 Peachtree Street, Suite 2300

Ms. Marti Marsh  
Purchasing Officer  
State of Nevada

Atlanta, Georgia 30303

Mr. Jim Day  
Technology Contracting Officer  
State of Iowa  
Department of Administrative Services  
Hoover State Office Building, Level A  
Des Moines, Iowa 50319

515 E. Musser Street, Ste. 300  
Carson City, Nevada 89701

Ms. Gayle Montgomery  
State Procurement Officer  
State of Oregon  
1225 Ferry Street, SE U140  
Salem, Oregon 97301

**5. Proposal Evaluation**

An Evaluation Committee approved by the WSCA Directors and appointed by MMD will perform the evaluation of proposals. This process will take place between the dates indicated in Section II, Paragraph A. During this time, the Contract Administrator may, at her option, initiate discussions with Responders who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals, but proposals may be accepted and evaluated without such discussion. Discussions SHALL NOT be initiated by the Responders.

**6. Selection of Finalists**

The Evaluation Committee will recommend, from the qualified responders, a list of finalists that are deemed most advantageous, taking into consideration the evaluation factors set forth in the RFP, to the Procurement Manager. The Procurement Manager will take these recommendations to the WSCA Directors for approval. Although the stated goal of the procurement is to make limited multiple source award(s), **no minimum or maximum number of awards has been predetermined.**

The Contract Administrator will notify Finalists on the date indicated in Section II, Paragraph A. Only finalists will be invited to participate in the subsequent steps of the procurement.

**7. Contract Negotiations with Finalists**

The Contract Administrator, with assistance from Procurement Manager, and MMD staff will enter into contract negotiations with Finalists approved by the WSCA Directors. Finalists may be asked and/or required to submit revisions to their proposals for the purpose of obtaining best and final offers by the date indicated in the Finalist Notification Letter.

**8. Sign Master Price Agreements**

The Master Price Agreements will be signed with the awarded Contractors on the schedule indicated in Section II, Paragraph A. In the event that mutually agreeable terms cannot be reached within the time specified, the MMD reserves the right to cancel the award with the selected Contractor (s).

## C. GENERAL REQUIREMENTS

This procurement will be conducted in accordance with Minn. Stat. Ch. 16C.

### 1. **Acceptance of Conditions Governing the Procurement**

Responders must indicate their acceptance of Section II, Conditions Governing the Procurement, in the letter of transmittal. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP.

### 2. **Incurring Cost**

Any cost incurred by the Responder in preparation, transmittal, presentation of any proposal or material submitted in response to this RFP shall be borne solely by the Responder.

### 3. **Contractor Responsibility**

The named Contractor(s) shall be solely responsible for fulfillment of the responsibilities under the terms and conditions of the Master Price Agreement. Unless otherwise provided in a Participating Addendum, Purchasing Entities will issue purchase orders and make payments to only the named contractor(s).

### 4. **Servicing Subcontractors**

Responders may propose the use of Servicing Subcontractors. However the Contractor shall remain solely responsible for the performance under the terms and conditions of the Master Price Agreement if Servicing Subcontractors are utilized.

### 5. **Amended Proposals**

An Responder may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The Evaluation Committee will not merge, collate, or assemble proposal materials.

### 6. **Responders' Rights to Withdraw Proposal**

An Responder will be allowed to withdraw its proposal at any time prior to the deadline for receipt of proposals. The Responder must submit a written withdrawal request signed by the Responder's duly authorized representative addressed to the Contract Administrator.

The approval or denial of withdrawal requests received after the deadline for receipt of the proposals is governed by the applicable procurement regulations.

### 7. **Proposal Offer Firm**

Responses to this RFP, including proposal prices, will be considered firm for ninety (90) days after the due date for receipt of proposals or sixty (60) days after receipt of a best and final offer if one is submitted.

### 8. **Disclosure of Proposal Contents**

All materials submitted in response to this RFP will become property of the MMD and will become public record after the evaluation process is completed and an award decision made. If the responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minn. Stat. § 13.37, the responder must:

- a. clearly mark all trade secret materials in its response at the time of the response is submitted,
- b. include a statement with its response justifying the trade secret designation for each item, and
- c. defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the State, its agents and employees, from any judgments awarded against the State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the State's award of a contract. In submitting a response to the RFP, the responder agrees that this indemnification survives as long as the trade secret materials are in possession of the State. The State is required to keep all the basic documents related to its contracts, including responses to RFPs, for a minimum of seven years.

**IF AN ENTIRE PROPOSAL IS DESIGNATED AS PROPRIETARY OR CONFIDENTIAL, IT MAY BE DISQUALIFIED FROM CONSIDERATION.**

The State agrees to protect all properly identified Contract trade secret material, as the term "trade secret" is defined in Minn. Stat. § 13.37. In the event a request is made for information which the Contractor has identified as "trade secret", the State agrees to notify the Contractor of said request and provide its determination as to whether disclosure is legally required, in addition to anticipated disclosure dates, if any, and to allow the Contractor an opportunity, in its discretion and at its sole expense, to seek a protective order or otherwise protect the confidentiality of the information.

**9. No Obligation**

This procurement in no manner obligates the State of Minnesota, any NASPO member or any Purchasing Entity to purchase of any products or services offered until a Master Price Agreement is signed, a Participating Addendum has been executed by the Contractor, and the Contractor receives and accepts a valid purchase order from an authorized Purchasing Entity.

**10. Termination**

This RFP may be canceled at any time and any and all proposals may be rejected in whole or in part when such action is determined to be in the best interest of the State of Minnesota and/or NASPO and WSCA.

**11. Administration Fees**

The Contractor shall report price agreement utilization and pay the WSCA administration fee in accordance with the terms and conditions of the Master Price Agreement. The WSCA directors approved the level of the WSCA administration fee.

The WSCA administration fee is not negotiable. Some states may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in a Participating Addendum that is made a part of the Master Price Agreement. The Contractor may adjust PSS pricing up to the percentage of the additional fee to be paid to an individual state for purchases made by Purchasing Entities within the jurisdiction of that State, upon specific agreement by the Participating Entity in the Participating Addendum. All such agreements shall have no effect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

**12. Acceptance of Proposal Contents**

The contents of this RFP and the response of the successful vendor will become contractual obligations, along with the final Contract, if acquisition action ensues. The State is solely responsible for rendering the decision in matters of interpretation of all terms and conditions.

If a Responder discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in the RFP, the Responder shall immediately notify the Contract Administrator in writing of such error and request modification or clarification of the document.

**13. Governing Law**

The RFP and the Contract shall be construed in accordance with, and its performance governed by, the laws of the State of Minnesota. Except to the extent that the provisions of the Contract are clearly inconsistent therewith, the Contract shall be governed by the Uniform Commercial Code (UCC) as adopted by the State. To the extent the Contract entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the UCC, except when to so deem such services as "goods" is unreasonable.

Venue for all legal proceedings arising out of the Contract, or breach thereof, shall be in the State or federal court with competent jurisdiction in Ramsey County, Minnesota.

**14. Basis for Proposal**

Only information supplied by the State in writing through the Contract Administrator or in this RFP should be used as the basis for the preparation of Responder proposals.

**15. Agreement Terms and Conditions**

The agreement between the State and the Contractor will follow the format specified by the State and contain the terms and conditions set forth in Appendix B, "Master Price Agreement". However, the State reserves the right to negotiate with a successful Responder provisions in addition to those contained in this RFP. The RFP, as revised and/or supplemented, and the successful Responder's proposal will be

incorporated into and become part of the agreement.

A Responder shall be presumed to be in agreement with these terms and conditions unless it takes specific exception to one or more of the conditions. Submission by the Responder of its proposed language shall not be viewed as an exception unless the Responder specifically states in the response that its proposed changes are intended to supersede the State's terms and conditions.

RESPONDERS ARE CAUTIONED THAT BY TAKING ANY EXCEPTION THEY MAY BE MATERIALLY DEVIATING FROM THE REQUEST FOR PROPOSAL. IF A RESPONDER MATERIALLY DEVIATES FROM THE GENERAL TERMS, CONDITIONS AND INSTRUCTIONS OR THE SPECIAL TERMS AND CONDITIONS AND/OR SPECIFICATIONS, ITS RESPONSE MAY BE REJECTED.

A material deviation is an exception to the Request for Proposal general or special terms and conditions and/or specifications that:

- a. Gives the Responder taking the exception a competitive advantage over other Responders, or
- b. Gives the State something significantly different from that which the State requested.

**16. Agreement Deviations**

Any additional terms and conditions, which may be the subject of negotiation, will be discussed only between the State and the selected Responder(s) and shall not be deemed an opportunity to amend the Responder's proposal.

**17. Responder Qualifications**

If the State, on the basis of available evidence, concludes that a particular Responder appears to be insufficiently responsible to ensure adequate performance, the response may be rejected.

Responses that do not comply with the provisions in the RFP may be considered nonresponsive and may be rejected.

**18. Rights Reserved**

Notwithstanding anything to the contrary, the State reserves the right to:

- a. Reject any and all responses (or portions thereof) received;
- b. Select, for contracts or for negotiations, a response other than that with the lowest cost;
- c. Waive or modify any informalities, irregularities, or inconsistencies in the responses received;
- d. Negotiate any aspect of the proposal with any Responder and negotiate with more than one Responder;
- e. Request a BEST and FINAL OFFER, if the Evaluation Team deems it

- necessary and desirable; and
- f. Terminate negotiations and select the next response providing the best value for the State, prepare and release a new RFP, or take such other action as the State deems appropriate if negotiations fail to result in a successful Contract.
- g. The Evaluation Committee also reserves the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the mandatory requirements and the failure to do so does not materially affect the procurement. This right is at the sole discretion of the Evaluation Committee.

**19. Changes in Contractor Representatives**

The Contractor must notify the Contract Administrator of changes in the Contractor's key administrative personnel, in advance and in writing. Any employee of the Contractor who, in the opinion of the State, is unacceptable, shall be removed from the project upon written notice to the Contractor.

**20. Laws and Regulations**

Any and all services, articles or equipment offered and furnished shall comply fully with all State and federal laws and regulations, including Minn. Stat. § 181.59 and Minn. Stat. Ch. 363 prohibiting discrimination.

**21. Completion of Responses**

A response may be rejected if it is conditional or incomplete. Responses that contain conflicting, false, or misleading statements or that provide references that contradict or do not support an attribute or condition stated by the Responder, may be rejected.

**22. Right to Publish**

Any publicity given to the program, publications or services provided resulting from the Contract, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Contract prior to its approval by the Contract Administrator.

The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Contract without the prior written consent of the Contract Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

**23. Ownership of Proposals**

All documents submitted in response to the RFP shall be available to be picked up by the Responders after the expiration of the protest period with the following exception. One (1) complete copy of the each Responder's proposal including the Best and Final

Offer, if one was submitted, shall be placed into the procurement file. Those documents will become the property of the State of Minnesota.

Responders may pick up their proposals from the respective representatives from the states that are evaluating proposals in accordance with instructions provided by the respective representatives. Evaluating states may choose to retain one (1) copy for their respective procurement files. States may destroy proposals that were not picked up during the allotted time.

**24. Product and Services Schedules**

The Contractor shall offer only those Products and services that are included on the Contractor's Product and Services Schedule (PSS). Contractors shall keep the schedule current and correct on an Internet web site maintained by the Contractor and approved by the Contract Administrator, in accordance with the terms and conditions of the Master Price Agreement.

**25. Additional Responder Qualifications**

The Evaluation Committee reserves the right to require timely submission of additional and/or supporting materials concerning Responder qualifications including financial, manufacturing, personnel, and marketing resources.

**26. Product Qualifications**

The Evaluation Committee reserves the right to require timely submission of additional and/or supporting materials concerning type and quality of the Products offered including product specifications, benchmark results or other meaningful measurement the Evaluation Committee believes would be helpful in assessing Product quality.

**27. Electronic Mail Address Required**

A large part of the communication regarding this solicitation will be conducted by electronic mail (e-mail). Responder must have a valid e-mail address to receive this correspondence.

**28. Use of Electronic Versions of this RFP**

This RFP is being made available by electronic means. If accepted by such means, the Responder acknowledges and accepts full responsibility to insure that no changes are made to the RFP. In the event of conflict between a version of the RFP in the Responder's possession and the version maintained by the State, the version maintained by the State shall govern.

**29. Addenda to the RFP**

Any addendum issued will become a part of the RFP. The State may modify or clarify the RFP by issuing one or more addenda to all parties who have expressed an interest in responding to the RFP. Each Responder must follow the directions on the Addendum. Addenda will be numbered consecutively in the order they are issued.

**30. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary**

## Exclusion

- a. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions.

Instructions for certification:

1. By signing and submitting this proposal, the prospective lower tier participant [responder] is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal [response] is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms *covered transaction*, *debarred*, *suspended*, *ineligible lower tier covered transaction*, *participant*, *person*, *primary covered transaction*, *principal*, *proposal*, and *voluntarily excluded*, as used in this clause, have the meaning set out in the Definitions and Coverages section of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction [subcontract equal to or exceeding \$100,000] with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List

of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

b. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transactions.**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**31. Nonvisual Access Standards.** Nonvisual access standards require:

That the effective interactive control and use of the technology, including the operating system, applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;

That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;

That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and

That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

**32. Copyrighted Material Waiver**

The State reserves the right to use, reproduce and publish proposals in any manner necessary for State agencies and other government entities including local units of

government to access the responses, including but not limited to photocopying, State Intranet/Internet postings, broadcast faxing, and direct mailing. In the event that the response contains copyrighted or trademarked materials, it is the Responder's responsibility to obtain permission for the State to reproduce and publish the information, regardless of whether the Responder is the manufacturer or reseller of the products listed in the materials. By signing its response, the Responder certifies that it has obtained all necessary approvals for the reproduction and/or distribution of the contents of its response and agrees to indemnify, protect, save and hold the State, its representatives and employees harmless from any and all claims arising from the violation of this section and agrees to pay all legal fees incurred by the State in the defense of any such action.

**33. TG/ED Preference**

In accordance with Minn. Stat. § 16C.16, subds. 6 and 7, eligible certified targeted group (TG) businesses and certified economically disadvantaged (ED) businesses will receive a 6 percent preference on the basis of award for this RFP. The preference is applied only to the first \$500,000 of the response to the RFP. Eligible TG businesses must be currently certified by the Materials Management Division prior to the bid opening date and time.

To verify TG/ED certification, refer to the Materials Management Division's web site at [www.mmd.admin.state.mn.us](http://www.mmd.admin.state.mn.us) under "Vendor Information, Directory of Certified TG/ED Vendors."

To verify TG eligibility for preference, refer to the Materials Management Division's web site under "Vendor Information, Targeted Groups Eligible for Preference in State Purchasing" or call the Division's Help Line at 651.296.2600.

**34. Affirmative Action.** The State requires affirmative action compliance by its Contractors.

- a. Covered Contracts and Contractor. If the Contract exceeds \$100,000 and the Contractor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principle place of business, then the Contractor must comply with the requirements of Minn. Stat. § 363.073 and Minnesota Rules 5000.3400-5000.3600. A Contractor covered by Minn. Stat. § 363.073 because it employed more than 40 full-time employees in another state and which does not have a certificate of compliance must certify that it is in compliance with federal affirmative action requirements.
- b. Minnesota Statutes Section 363.073 requires the Contractor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the commissioner of Human Rights (commissioner) as indicated by a certificate of compliance. The law addresses suspension or revocation of a certificate of compliance and Contract consequences in that event. A Contract awarded without a certificate of

- compliance may be voided.
- c. Minnesota Rules 5000.3400-5000.3600 implement Minn. Stat. § 363.073. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a Contractor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for noncompliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn Rules 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and 5000.3552-5000.3559.
  - d. Disabled Workers. The Contractor must comply with the following affirmative action requirements for disabled workers.

**"AFFIRMATIVE ACTION FOR DISABLED WORKERS**

- (a) The contractor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (b) The contractor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- (c) In the event of the contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minnesota Statutes Section 363.073, and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- (d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants, and the rights of employees and applicants.
- (e) The contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the contractor is bound by the terms of Minn. Stat. § 363.073, of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons."

- e. Consequences. The consequences of a Contractor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the commissioner, refusal by the commissioner to approve subsequent plans, and termination of all or part of this Contract by the commissioner or the State.
- f. Certification. The Contractor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363.073 and Minnesota Rules 5000.3400 to 5000.3600 and is aware of the consequences for noncompliance.

**35. Hazardous Substances**

To the extent that the goods to be supplied to the State by the responder contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the responder must provide the State with Material Safety Data Sheets regarding those substances (including mercury). A copy must be included with each delivery.

**36. State Requirements**

The Contractor is responsible to present information to State agency and Cooperative Purchasing Venture (CPV) customers regarding product compliance with State requirements. The Contractor's catalog and other marketing materials utilized to offer products under this Contract shall affirmatively state when a product is in compliance with the Americans with Disabilities Act (ADA), the Nonvisual Access Standards (Minn. Stat. Ch. 16C.145), and the Energy Star Standards. The Contractor must also indicate in the catalog or other marketing materials if the product will not operate, is not intended to operate, or will not operate under full manufacturer's warranty, using paper with a post-consumer recycled content of 30 percent or greater. If any descriptive marketing materials are silent as to any or all of these requirements (e.g., ADA compliance, functions utilizing 30 percent recycled content paper), the Contractor agrees that the customer can assume the product meets or exceeds the State requirements.

**37. Organizational Conflicts of Interest**

The Responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:

- a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
- the Contractor's objectivity in performing the work is or might be otherwise impaired; or
- the Contractor has an unfair competitive advantage.

The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that

shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Contract. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the Contract Administrator, the State may terminate the Contract for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Contract," "Contractor," and "Contract Administrator" modified appropriately to preserve the State's rights.

**38. Notice to Responders**

Pursuant to Minn. Stat. § 270.66, Contractors are required to provide their Federal Employer Identification Number or Social Security Number. This information may be used in the enforcement of federal and State tax laws. Supplying these numbers could result in action to require a Contractor to file tax returns and pay delinquent tax liabilities. These numbers will be available to federal and State tax authorities and State personnel involved in the payment of State obligations.

**39. Dispute Resolution Procedures.** Any issue a responder has with the RFP document, which includes, but is not limited to, the terms, conditions, and specifications, must be submitted in writing to the AMS prior to the bid opening due date and time. Any issue a responder has with the Contract award must be submitted in writing to the AMS within five working days from the time the Contract award is made public. The State will respond to any protest received that follows the above procedure.

**40. Electronic Funds Transfer (EFT) Payment Method and Structure**

In accordance with Minn. Stat. § 16A.40 the Responder receiving the award of this Solicitation will be required to provide their bank routing information to the Department of Finance to enable payments to be made through EFT.

### **III. Response Format and Organization**

**A. NUMBER OF RESPONSES**

Responders shall submit only one proposal.

**B. NUMBER OF COPIES**

Responders shall deliver one original and two (2) identical copies of their proposal to the Contract Administrator at the location specified in Section II, Paragraph B4 on or before the closing date and time for receipt of proposals. For those responders who do not currently hold a WSCA Master Price Agreement for Computer Equipment, two (2) additional copies shall be delivered to each state representative specified in Section II, Paragraph B4.

### C. PROPOSAL FORMAT

All proposals must be typewritten on standard 8 ½ x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section.

Contractors who were awarded a Contract based on the RFP from Manufacturers of Personal Computer Equipment and Related Devices that was issued on February 9, 2004, need not respond to all of the requested information in Section IV. Specifications. These Contractors need only respond to Section IV, Items: 2. Products and Services Overview, paragraph a. Breadth of Offer, 8. Pricing Level and Volume Discount Guarantees, 9. Products and Services Schedule, 10. Entire Proposal in electronic Format (including Pricing Configurations), and 14. Cost; and all of Section III. Response Format and Organization. If any of these Contractors are successful awardees in this RFP, the Contractor's Master Price Agreement will be amended to include these new offerings.

#### 1. Proposal Organization

The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

- a. Letter of Transmittal
- b. Table of Contents
- c. Proposal Summary (optional)
- d. Response to Specifications 1 through 8
- e. Response to Specification 9. Product and Services Schedule Diskette(s), CD or URL address
- f. Response to Specification 10. Complete Proposal/Revised Master Price Agreement on Diskettes or CD
- g. Response to Specifications 11 through 13

If a second binder is required, the following items should be placed in Binder 2:

- h. Response to Specification 14. Completed Cost Response Form(s) Sealed
- i. Responder's Additional Terms and Conditions
- j. Sample Reports and Other Supporting Material
- k. State of Minnesota forms, Appendices F through J

Within each section of their proposal, Responders should address the items in the order in which they appear in this RFP. All forms provided in the RFP must be thoroughly completed and included in the appropriate section of the proposal. Any proposal that does not adhere to these requirements will be deemed non-responsive and may be rejected on that basis.

The proposal summary may be included by Responders to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Responder's proposal.

Responders may attach other material that they feel may improve the quality of their

responses. However, these materials should be included and indexed in binder 2.

## 2. Letter of Transmittal

A letter of transmittal **MUST** accompany each proposal. The letter of transmittal **MUST CONTAIN THE FOLLOWING:**

- a. Identify the submitting organization;
- b. Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized by the organization to contractually obligate the organization;
- c. Identify the name, title, telephone and fax numbers, and e-mail address of the person authorized to negotiate the contract on behalf of the organization;
- d. Identify the names, titles, telephone and fax numbers, and e-mail addresses of persons to be contacted for clarification;
- e. Explicitly indicate acceptance of the Conditions Governing the Procurement stated in Section II, Paragraph C.1;
- f. Be signed by the person authorized to contractually obligate the organization;
- g. Acknowledge receipt of any and all amendments to this RFP.
- h. A statement in which the Responder certifies that, in connection with this Contract, the prices proposed have been arrived at without consultation, communication, or agreement, for the purpose of restricting competition.
- i. A statement guaranteeing that each person signing this response and addenda, if required, is the person in the Responder's organization responsible for, or authorized to, make decisions as to the prices quoted in the cost response and that she/he has not participated and will not participate in any action contrary to those stated above. **NOTE:** A copy of corporate resolutions must accompany the transmittal letter, authorizing the person(s) signing and/or initialing the response to sign binding contracts.
- j. A statement that the Contractor shall not assign any part of its interest in the Contract without prior written consent of the State. This consent shall not be unreasonably withheld.
- k. A statement describing technology-related products the responder can offer as part of its response that comply with the nonvisual access standards as set forth in Minn. Stat. Ch. 16C.145 and how those products are identified in the product listing. Provide information on the differences in quality, prices, and delivery.

## IV. SPECIFICATIONS

This section contains specifications and relevant information Responders should use for the preparation of their proposals.

Responders should respond as described to each specification. The responses along with the required supporting material will be evaluated and awarded points accordingly.

### A. INFORMATION

**1. State of Minnesota Support**

The State of Minnesota will assign a Contract Administrator to administer the Master Price Agreement in accordance with terms and conditions of the Master Price Agreement, Appendix A.

**2. Facilities**

The State of Minnesota will host and maintain an Internet web site providing administrative information concerning use of the master price agreements.

**B. TECHNICAL SPECIFICATIONS**

**1. Corporate Overview**

Responders must provide a brief history and description of their company including but not limited to the following:

**a. Facilities**

Responders must indicate number and location of manufacturing, distribution outlets and support centers, as appropriate.

**b. Personnel**

Responders must include a map or other documentation that indicates by state the number and type of sales, support personnel or other resources that are employed to service purchase orders and/or equipment for non-federal governmental customers.

**c. State Contracts**

Responders must include the list of states where the Responder has been awarded a statewide price agreement for similar equipment products and services by the central purchasing authority or State Purchasing Official. The information required in response to this specification includes the name and telephone number of the Contract Administrator plus the effective and termination dates of the agreement(s).

**d. Organization**

Responders must include an organization chart and a thorough narrative describing how the Master Price Agreement will be supported from senior management down to field technicians including the use of any wholly owned subsidiaries or subcontractors.

**e. Complaint Resolution**

Responders must thoroughly describe their procedures for addressing and resolving customer problems and complaints—service, equipment or billing—including time lines and escalation measures.

**f. Preference Programs**

Responders must describe their experience and capacity to meet Minority and Women Business Enterprise (MWBE) and other local purchasing preferences that vary among potential Participating Entities.

**g. Subcontractor Usage**

If Subcontractor(s) are proposed, Responders must describe what

products or services they will provide, how they are certified by the manufacturer, how they are contractually bound to the Master Price Agreement terms and conditions (plus any modifications thereto contained in Participating Addenda) and how their sales will be accurately tracked and reported.

## **2. Products and Services Overview**

Responders must describe their ability to provide and support Products and services to the NASPO member states and the various governmental entities therein. The narrative in response to this specification should include, at a minimum, an overview describing how Products are delivered and supported nationwide plus specific information as follows:

### **a. Breadth of Offering**

Responders must thoroughly describe the breadth of their Product and Service offerings. The narrative that is submitted in support of the list should provide the Evaluation Committee with a clear indication of the breadth of the product line flexibility and performance.

New Responders must provide a summarized list of the models or variations available in each of the following primary categories. Current Contractors need to only provide this list for models or variations available in Band 1, Server Three and Server Four categories, and Band

#### **BAND 1 - Servers**

Server One (under \$50,000)  
Server Two (\$50,000-\$100,000)

#### **BAND 2 - Desktops**

Workstation One (Under \$50,000)  
Workstation Two (\$50,000-\$100,000)

#### **BAND 4 - Storage Solutions**

Storage Solution One (Under \$50,000)  
Storage Solution Two (\$50,000-\$100,000)

### **b. Customer Satisfaction**

Responders should submit customer satisfaction statistics or survey results concerning the quality of the Products and services offered.

### **c. Value Added Services**

Responders should thoroughly describe their ability to provide value added Services including but not limited to installation, training and/or related optional Services contained in the definition of Services, and describe the geographic area where the Services may be provided. Do not include general consulting or any form of application development services.

- d. **E- Rate Program**  
Responders should describe their commitment to participation in the Federal Communications Commission's E-Rate discount program established under authority of the Federal Telecommunications Commission Act of 1996 by supplying their E-Rate contractor identification number and the list of E-Rate qualifying Products.
  - e. **Section 508 Compliance**  
Responders should describe their commitment to the manufacture of accessible products by describing their support of the applicable provisions of the Federal Rehabilitation Act of 1998, Section 508.
3. **Reporting**
- a. **WSCA (Administration) Reporting**  
Responders must agree to provide quarterly utilization reports to the Contract Administrator based upon the schedule and minimum content as described in Paragraph 44 of the Master Price Agreement, Appendix A. Responders must describe their ability and commitment to meet this requirement.
  - b. **Customer (Participating Entity) Reporting**  
Responders should describe and include additional sample reports for states and/or Purchasing Entities. Responders should describe enhanced reporting capabilities such as electronic delivery of reports or direct access to Internet or other database that may be used to administer the Master Price Agreement. Asset management or other reports for Purchasing Entities should be addressed.
4. **Electronic Commerce**  
Responders must describe their ability to provide and commitment to maintain an Internet web site that contains, at a minimum, their complete approved PSS plus Product specifications, configuration aids, Service options, service agreement(s) as well as contact information for order placement, purchase order tracking, problem reporting, equipment maintenance and billing concerns. In addition, Responders must respond to the following:
- a. **Web Site**  
Responders must provide, *in the proposal*, the URL to a web site that provides the proposed functions and complete PSS and product specifications, configuration aids, service options, service agreement(s) as well as contact information for order placement, purchases order tracking, problem reporting, equipment maintenance and billing concerns.
  - b. **Electronic Processing**  
Responders must thoroughly describe their ability or commitment to accept and process purchase order electronically as well as online payment via purchase card. The ability to provide electronic funds transfer and/or a seamless electronic interface to governmental accounting systems should be thoroughly described.

c. **Auditing**

Responders must describe how and how often the web pricing and invoicing is audited to insure contractual compliance. Responders shall propose a schedule for such audits.

5. **Primary Account Representative**

Responders must identify by name and location the proposed primary account representative who will be responsible for the performance of the Master Price Agreement. A resume must be included in the Responder's proposal for the named individual.

6. **References**

Responders **must** submit five (5) written letters of reference as part of the response from current or previous states (do not include references from Alaska, Arkansas, Arizona, Georgia, Iowa, Louisiana, Minnesota, Montana, Nebraska, Nevada, Oregon, or New Mexico) or other larger governmental (not federal) entities **and/or large educational institutions** that have or are currently receiving similar products and services to those proposed by the Responder for this solicitation. In addition to the letter of reference, each reference must include the name of the contact person, street address, telephone number, e-mail address and description of products and services provided. Responders should advise their references to expect to be contacted by the Evaluation Committee during the evaluation period.

7. **Rollout and Marketing Plan**

a. **Plan and Methodology**

Responders must submit a thorough rollout plan as part of the proposal. At a minimum, the response should include a description of the methodology (mailings, meetings, seminars, press releases, personal contacts) proposed, dates and location of activities, and a Gantt chart including tasks to be performed and the time frame for the completion of each task.

b. **Contracting Personnel**

Responder must identify the contracting personnel who will be assisting states with the completing and processing of Participating Addenda. A resume must be included in the Responders proposal for the first five named individuals. Experience has shown that an adequate number of trained contracting personnel are key to the success of a national Master Price Agreement.

c. **Marketing Materials**

Responders should include sample rollout and follow-up marketing materials with their proposals. Responders are reminded that once a statewide participating addendum is in place, nearly every governmental entity, public school and university within the state may use the contractor's Master Price Agreement.

**8. Pricing Level and Volume Discount Guarantees**

Responders must submit with their proposal a narrative that describes the baseline (published) pricing and the initial pricing level discount that is proposed, by type or category of Products and services as reflected in the PSS. The response to this specification must be in the form of a percentage discount from a published or base line price listing. Responders must describe the base line pricing and provide information where the baseline pricing may be accessed and verified.

Responders should provide additional volume based pricing for consideration. The Evaluation Committee will be evaluating both per transaction and cumulative volume discounts that may be achieved as well as programs that allow for deeper discounts for Contractor proposed standardized configurations.

**a. Per Transaction Multiple Unit Discount**

Responders should propose a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase. The narrative in response to this specification should include a table indicating the additional discount percentage to be earned by volume purchased at one time.

**b. Cumulative**

Responders should propose a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of their Master Price Agreement. The narrative in response to this specification should include a table indicating the additional discount percentage to be earned by cumulative volume purchased. For example, Responders may propose an increase in price discounts from the baseline pricing for cumulative volumes greater than "X" million of dollars.

**c. Standard Configurations**

Responders should propose and describe their commitment to offer and maintain deeply discounted (state the discount from a baseline) standard configurations that are available to Purchasing Entities using the Master Price Agreement only. The response to this specification should include a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

**9. Products and Services Schedule**

Responders must submit with their proposals a complete Product and Services Schedule including all the Services and Equipment offered in response to the previous specification at the initial pricing level stated in response to the previous specification. The PSS may be submitted in Microsoft Word or Excel format on 3.5 inch diskettes or a CD-ROM or web page (provide URL).

**10. Complete Proposal/Revised Price Agreement**

Responders must submit with their proposal 3.5" diskette (s) or CD-ROM that contains the Responder's entire proposal; as well as the proposed revised Master Price Agreement terms and conditions. Both documents shall be in Microsoft Word format. The revised Master Price Agreement shall have the changes highlighted; and where possible an explanation of the reason for the requested change.

**11. Alternatives**

Responders should provide any suggested improvements and alternatives for doing business with your company that will make this arrangement more cost effective for your company and participating public agencies.

**12. Financial Strength**

Responders must include a statement concerning their financial strength supported by an annual report or other relevant information including the latest Dun & Bradstreet rating.

**13. Takeback / Environmental Programs**

**a. Takeback/Recycling**

Responders must describe their Equipment Takeback/recycling program for the products offered in this RFP by addressing each of the following: date the program is or will be in operation, volume of Equipment being recycled/disposed or proposed, certificates of lawful disposal, takeback charges by type of Equipment, compliance with the European Union's WEEE Directive requiring the recycle or reuse of old Equipment and compliance with federal or other regulatory authorities regarding disposal of electronic equipment. Responders should Address ISO 14001 certification. The takeback charge refers to the fee the entity will pay to the Contractor to take back equipment for either resale or recycling. If the Contractor has programs that allow for the entity to recover any of the value of the returned equipment, that should also be clearly stated.

**b. Environment**

Responders must describe their Product environmental improvement program in each of the following areas: reduction/minimization/avoidance of the use of toxic and hazardous constituents (cadmium, chromium, mercury, and/or lead); compliance with international directives such as the European Union's Directive "Restriction of Hazardous Substances", reduction of chlorinated plastics (PVC) and brominated flame retardants; certification by independent third party eco-labeling programs (TCO, Blue Angel, and Nordic Swan); and the migration to the use of recyclable, nontoxic packaging. Responders must specifically identify each equipment model number that has been certified and the type of certification obtained. In addition, Responders must list the model

numbers of units being submitted for certification as well a schedule for any remaining units. Finally, Responders must describe how certified units are labeled and identified as such on the web site.

**c. Energy Efficiency**

Responders must describe their energy efficiency program (s) by identifying the Products that meets Energy Star or other recognized program for energy efficiency. In addition, Responders must describe how Products are identified as energy efficient on the units and on their web site.

**14. Cost**

Responders must complete the Price Configuration Form(s) found in Appendix B and submit them with their proposal, using the proposed PSS prices. For the purpose of preparing the proposal, Responders are to assume that proposed Equipment configurations are delivered to and serviced in St. Paul, Minnesota. The configuration pricing shall be single unit, non-educational pricing. If you are unable to match the exact specifications, please provide your closest equivalent.

Band 2 Workstation Two (\$50,000-\$100,000), and Band 4 Storage Solution Two (\$50,000-\$100,000) do not list an exact specification. Responders are to propose a configuration that meets the dollar threshold for that Band.

## **V. EVALUATION**

**A. EVALUATION POINT SUMMARY**

The following is a summary of evaluation factors and the point value assigned to each. These weighted factors will be used in the evaluation of the individual Responder proposals. Current Contractors will be given points only in the areas where they need to respond [Section IV, Items: 2. Products and Services Overview, paragraph a. Breadth of Offer, 8. Pricing Level and Volume Discount Guarantees, 9. Products and Services Schedule, 10. Entire Proposal in electronic Format (including Pricing Configurations), and 14. Cost; and all of Section III. Response Format and Organization.]

**B. EVALUATION FACTORS**

A total of 795 points is possible. Points will be awarded on the basis of the following evaluation factors:

**1. Corporate Overview (125 total possible points)**

The Responder's response will be evaluated and points awarded based upon the following criteria:

- a. Facilities**—Up to a maximum of **25 points** will be awarded based upon an assessment of the adequacy of the Responder's facilities to support

- the Master Price Agreement.
- b. **Personnel**—Up to a maximum of **25 points** will be awarded based upon an assessment of the adequacy of the Responder's personnel including resellers/subcontractors to support the Master Price Agreement.
  - c. **State Contracts**—Up to a maximum of **25 points** will be awarded based upon the number and type of state contracts the Responder has and/or had in place in the past two years.
  - d. **Responder Organization**—Up to a maximum of **20 points** will be awarded based upon an assessment of the adequacy of the Responder's proposed organization to implement and support the Master Price Agreement.
  - e. **Complaint Resolution**—Up to a maximum of **15 points** will be awarded based upon an assessment of the adequacy of the problem escalation procedures.
  - f. **Preference Programs**—Up to a maximum of **15 points** will be awarded based upon an assessment of the adequacy and success of the Responders' local preference program (s).
  - g. **Agent Reseller Usage** —No points
2. **Products and Services Overview (80 total possible points)**
- a. **Breadth of Offering** —Up to a maximum of **30 points** will be awarded based upon the breadth of the proposed product line including the configuration flexibility and range of performance.
  - b. **Customer Satisfaction**—Up to a maximum of **15 points** will be awarded based upon user survey results or other comparable statistics submitted. Written evaluations from third-party testing or evaluation organizations will be given consideration over user surveys or other similar documentation.
  - c. **Value Added Services**—Up to a maximum of **15 points** will be awarded to Responders who can provide value added technical services including installation, training or directly related optional services.
  - d. **E-Rate Program**—Responders with eligible Products and an E-Rate identification number will receive **10 points**.
  - e. **Section 508 Compliance**—Up to a maximum of **10 points** will be awarded based upon the described level of implementation of Section 508.
3. **Reporting (15 total possible points)**
- a. **WSCA Reporting**—No points
  - b. **Customer Reporting**—Up to a maximum of **15 points** will be awarded based upon the type and quality of the reporting available.
4. **Electronic Commerce (50 total possible points)**
- Web Site**—Up to a maximum of **20 points** will be awarded based upon an assessment of the breadth of content (configuration aids, product specifications,

support personnel, problem reporting), ease of use and overall quality of the proposed web site.

- a. **Electronic Processing**—Up to a maximum of **15 points** will be awarded based upon an assessment of the web sites ability to perform purchase order placement, purchase order tracking, online payment via a purchase card and other relevant capabilities.
  - b. **Auditing**—Up to a maximum of **15 points** will be awarded based upon the Responders response including the frequency and type of audits performed.
5. **Primary Account Representative** —Up to a maximum of **25 points** will be awarded based upon an evaluation of the knowledge and experience of proposed primary account representative as documented in the resume submitted in the proposal.
6. **References**—Up to a maximum of **25 points** will be awarded based upon the content of the letters of reference, and optionally, to a series of questions that may be asked of the references concerning the quality of the Responder's products and services, the delivery of products and services, responsiveness to problems and complaints and the level of satisfaction with the Responder's overall performance.
7. **Rollout and Marketing Plan (35 total possible points)**
  - a. **Plan and Methodology**—Up to a maximum of **10 points** will be awarded based upon the quality, efficiency, and thoroughness of the rollout plan and methodology submitted as part of the Responder's proposal.
  - b. **Contracting Personnel**—Up to a maximum of **15 points** will be awarded based upon an evaluation of the adequacy and experience of the proposed contracting personnel that will be supporting and processing Participating Addenda.
  - c. **Marketing Materials**—Up to a maximum of **10 points** will be awarded based upon an evaluation of the quality of the proposed marketing materials as well as the approach and contractor's commitment to provide on -going marketing support after the initial rollout.
8. **Pricing Level and Volume Discount Guarantees (100 total possible points)**
  - a. **Initial**—Up to a maximum of **25 points** will be awarded based upon an assessment of the monetary value of the proposed base discounts.
  - b. **Per Transaction Multiple Unit Volume Discount**—Up to a maximum of **25 points** will be awarded based upon an assessment of the monetary value of the proposed additional discounts.
  - c. **Cumulative Volume Discount**—Up to a maximum of **25 points** will be awarded based upon an assessment of the monetary value of the proposed additional discounts.

- d. **Standard Configurations**—Up to a maximum of **25 points** will be awarded based upon an assessment of the monetary value of the proposed additional discounts.
- 9. **Products and Services Schedule**—No Points.
- 10. **Complete Proposal/Revised Price Agreement on Diskette**—No Points.
- 11. **Alternatives**—No Points.
- 12. **Financial Strength**—No Points.
- 13. **Takeback/Environmental Program (100 total possible points)**
  - a. **Takeback/Recycle**—Up to a maximum of **40 points** will be awarded based upon the thoroughness of the response to the specification. Operational programs will receive greater consideration than proposed programs.
  - b. **Environment**—Up to a maximum of **30 points** will be awarded based upon the thoroughness of the response to the specification including the number of units certified, the type of certification and the level of commitment to certify the remaining units.
  - c. **Energy Efficiency** – Up to a maximum of **30 points** will be awarded based upon the number of documented energy efficient Products proposed.
- 14. **Cost (240 total possible points)**  
Total cost will be calculated by adding the proposed cost for each category in each Band.

#### C. EVALUATION PROCESS

During the evaluation process, all information concerning the responses submitted will remain private and will not be disclosed to anyone whose official duties do not require such knowledge.

Responses are private or nonpublic data until the completion of the evaluation process. The completion of the evaluation process means that the State has completed negotiating the contract with the selected vendor. If no award is made the responses are not made public. The State will notify the unsuccessful responders in writing that their responses have not been accepted.

- 1. All Responder proposals will be reviewed for compliance with the mandatory requirements stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.
- 2. The Contract Administrator may contact the Responder for clarification of the

- response as specified in Section II, Paragraph B.5.
3. The Evaluation Committee may use other sources of information to perform the evaluation as specified in Section II, Paragraph C.17.
  4. The Evaluation Committee may require the Responders to submit additional and/or supporting materials in accordance with Section II, Paragraph C.25 and Paragraph C.26
  5. Responsive proposals will be evaluated on the factors in Section V that have been assigned a point value. The responsible Responders with the highest scores will be selected as finalist Responders based upon the proposals submitted. Finalist Responders who are asked or choose to submit revised proposals for the purpose of obtaining best and final offers will have their points recalculated accordingly. The responsible Responder(s) whose proposal is most advantageous to NASPO and WSCA members, taking into consideration the evaluation factors in Section V, will be recommended for award as specified in Section II, Paragraph B.6. Please note, however, that a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.

# APPENDIX A

## Master Price Agreement Terms and Conditions

### WESTERN STATES CONTRACTING ALLIANCE

#### MASTER PRICE AGREEMENT

for

#### COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS, AND RELATED SERVICES

Number \_\_\_\_\_

This Agreement is made and entered into by \_\_\_\_\_ ("Contractor") and the Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Participating States and Participating Entities.

#### RECITALS

**WHEREAS**, the State has the need to purchase and the Contractor desire to sell; and,

**WHEREAS**, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

**NOW, THEREFORE**, in consideration of the mutual promises contained herein, the parties agree as follows:

#### INTENT AND PURPOSE

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** products proposed in their response to the RFP issued by the State of Minnesota. The Contractor may use subcontractors to provide the warranty and/or maintenance services; however the Contractor will be responsible for working with the equipment manufacturer on behalf of the Purchasing Entity and for the timeliness and quality of all services provided.

It is the further intent of this Agreement that leasing or rental agreements are not included. Each Participating Entity is allowed to negotiate leasing or rental agreements into their Participating Addendum, if they have the legal authority to enter into these types of agreements without going through a competitive process.

This Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations should not exceed \$100,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed \$25,000 each, or \$50,000 each.

Contractors must be willing to comply with these restrictions by agreeing to supply product in those price ranges only. Individual Participating States may set state specific limits in a participating addendum above the \$100,000, with the prior approval of the WSCA Directors.

Contractors may offer, but participating states and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the Agreement.

## 1. Definitions

**"Announced Promotional Price"** are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under predefined terms and conditions.

**"Contract"** means an agreement for the procurement of items of tangible personal property or services.

**"Contract Administrator"** means to an individual appointed by the State to administer this Agreement on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

**"Contractor"** shall mean successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance services for the products included in this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof.

**"Consumables"** that are required for the operation of Equipment offered or supplied are included -- printer cartridges, batteries, projector bulbs, etc. Consumables such as magnetic media, paper and generally available office supplies are excluded.

**"CPV Member"** is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota's Cooperative Purchasing Venture (CPV) program.

**"CPV Program"** The Cooperative Purchasing Venture (CPV) program, as established by Minn. Stat. § 16C.03, subd. 10, authorizes the Commissioner of Administration to "enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as described in section 471.59, subdivision 1." Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the "State contract price."

**"Cumulative Volume Discount"** means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of their Master Price Agreement.

**"Documentation"** refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor's web site.

**"E-Rate"** is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

**“Educational Discount Price”** means the price offered in a nationally announced promotion, which is limited to educational customers only, as defined by the Contractor.

**“Energy Star®”** is a voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes identification of energy efficient computers easy by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. Energy Star qualified computers and monitors automatically power down to 15 watts or less when not in use and may actually last longer than conventional products because they spend a large portion of time in a low-power sleep mode. For additional information on the Energy Star program, including product specifications and a list of qualifying products, visit the Energy Star website at <http://www.energystar.gov>.

**“Equipment”** means workstations, desktops, servers, and storage solutions, including upgrade components such as memory, storage drives, and spare parts.

**“FCC”** means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

**“General Price Reduction Price”** means the price offered to consumer, business or governmental purchaser at prices lower than PSS pricing. General price reduction prices will be reflected in the PSS as soon as practical.

**“ISO 14001”** is the conformance standard within the family of ISO 14000 documents developed by the International Organization for Standardization (ISO) in Geneva, Switzerland. Similar in structure to the ISO 9000 quality management system standard, ISO 14001 outlines key requirements companies should comply with in order to operate in an environmentally responsible manner. Utilizing ISO 14001, companies can merge environmental programs into one coherent system to efficiently manage all environmental activities. In short, ISO 14001 provides organizations with a way to demonstrate to their customers that their environmental processes and impact are effectively managed, continually improving, and part of the corporate management system. For more information, please refer to [www.iso.org](http://www.iso.org).

**“Lead State”** means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this solicitation, the Lead State is Minnesota.

**“Mandatory”** The terms “must” and “shall” identify a mandatory item or factor.

**“Manufacturer”** means the company that designs, assembles, and markets the computer and audio-visual equipment referenced in the RFP. The manufacturer’s name(s) shall appear on the computer equipment. **The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.**

**“Master Price Agreement”** means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of Contractor’s products and/or services by Purchasing Entities. The “master price agreement” is a permissive price. In order for a Purchasing Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or Participating Entity.

**“Materials Management Division” or “MMD”** means the procurement official for the State of Minnesota or a designated representative.

**“NASPO”** means the National Association of State Procurement Officials

**“Participating Addendum”** means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to

a State or political subdivision and other specific language or other requirements. Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the master price agreement. Additional terms and conditions may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. ***Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price***

**Agreement.** One physically or digitally signed copy of each Participating Addendum shall be filed by the Contractor with the Contract Administrator within five (5) days after execution.

**“Participating State” or “Participating Entity”** means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, or who subsequently signs a Participating Addendum where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement through the execution of a participating addendum.

**“Per Transaction Multiple Unit Discount”** means a contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase.

**“Political Subdivision”** means local public governmental subdivisions of a state, as defined by that state’s statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

**“Price Agreement”** means an indefinite quantity contract that requires the Contractor to furnish products or services to a Purchasing Entity that issues a valid Purchase Order.

**“Procurement Manager”** means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating Entities.

**“Product(s)”** means printing equipment, but not unrelated services. The Contractor(s) shall provide the warranty service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

**“Products and Services Schedule Prices”** mean the maximum prices offered to Participating Entities exclusive of Announced Promotional Prices, Education Discount Prices, General Price Reductions, or Large Order Negotiated Prices. All such products and services shall be listed on the Contractor’s web site accessible via a URL.

**“Purchase Order”** means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

**“Purchasing Entity”** means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a Agreement for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or services described in this solicitation.

**“Services”** are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Price Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/help desk, and any other directly related technical support service required for the effective operation of a product offered or supplied. General consulting and all forms of application development and programming services are excluded.

**“Servicing Subcontractor” or “Agent Reseller” or “Subcontractor”** means a Contractor authorized and state-approved subcontractor who may provide local marketing support or

other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor's Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided in a Participating Agreement. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. **The Contractor actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor's providing warranty service and maintenance for equipment on a Master Price Agreement as well as the Take back Program.**

**"Standard Configurations"** mean deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

**"State Procurement Official"** means the director of the central purchasing authority of a state.

**"Takeback Program"** means the Contractor's process for accepting the return of the equipment or other products at the end of life.

**"Trade In"** refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment.

**"Travel"** means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the purchasing entities allowances, if any, as outlined in the PA.

**"Universal Resource Locator" or "URL"** means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

**"WSCA"** means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

## **2. Scope of Work**

The Contractor, or its approved subcontractor, shall accept purchase orders and payments from and deliver Products and services to Purchasing Entities in accordance with the terms of this Agreement. This Agreement is a "Master Price Agreement". Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by the Contractor of valid "Purchase Orders". Purchase Orders may be issued to purchase the license for software or to purchase products listed on the Contractor's approved PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor's approved PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official. The Contractor is required to provide warranty and maintenance services on equipment that is purchased. The Contractor shall offer a Takeback Program for all products covered by this Agreement.

## **3. Title Passage**

The Contractor must pass unencumbered title to any and all products purchased under this

Agreement upon receipt of the product by the Purchasing Entity. This obligation on the part of the Contractor to transfer all ownership rights does not apply to proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensor, or to unmodified commercial software that is available to the State on the open market. Ownership rights to such materials shall not be affected in any manner by this Agreement.

**4. Permissive Price Agreement and Quantity Guarantee**

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and services from other sources during the agreement term. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

**5. Order of Precedence**

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and Services listed on the Purchase Order only; no additional terms or conditions conflicting with this Agreement or the Participating Addendum will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. Executed Participating Addendum(s);
- B. Terms and conditions of this Agreement;
- C. Exhibits and amendments to this Agreement;
- D. The list of products and services contained in the purchase order;
- E. The request for proposals document P-1331 and Addenda thereto; and
- F. Contractor's proposal including any written clarifications and/or best and final offer.

**6. Payment Provisions**

All payments under this Agreement are subject to the following provisions:

**A. Acceptance**

A Purchasing Entity shall determine whether all Products and Services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor within thirty (30) calendar days following delivery of non-acceptance of a product or service.

**B. Payment of Invoice**

- 1. Payments shall be submitted to the Contractor at the address shown on the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Payments shall be made in accordance with the applicable laws of the Purchasing Entity.
- 2. For Minnesota, per Minn. Stat. § 16A.124, payment shall be made to the Contractor within thirty (30) days following receipt of an undisputed invoice, merchandise or service whichever is later. After the thirtieth day, interest may be paid on the unpaid balance due to the Contractor at the rate of one and one-half percent per month. The Purchasing Entity shall make a good-faith effort to pay within thirty (30) days on all undisputed invoices. Payments may be made

via a Purchasing Entity's "Purchasing Card".

3. In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

**C. Payment of Taxes**

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes. Taxes for State agencies will be paid directly to the Department of Revenue using Direct Pay Permit #1114.

**D. Invoices**

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Contractor shall provide a commercial invoice. The Contractor shall also provide a packing slip/list for each system to identify the components included within the configuration. Invoices shall match the line items on the Purchase Order. The Purchase Order number should be shown on the packing slip and invoice.

**7. Agreement Term**

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota, through August 31, 2007. The Agreement may be mutually renewed for two (2) additional one-year terms unless terminated pursuant to the terms of this Agreement.

**8. Termination**

The following provisions are applicable in the event that the agreement is terminated.

**A. Termination for Convenience**

At any time, the State may terminate this agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the Contract Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

**B. Termination for Cause**

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after

receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

**C. A Purchasing Entity's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and services accepted prior to the effective termination date.

**D. The Contractor's Rights**

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted.

**9. Non-Appropriation**

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the goods or services due for multiple year agreements, or if operations of the paying entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.

**10. Shipment and Risk of Loss**

- A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor until delivery to the identified ship to address when responsibility and liability for loss shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.
- B. Whenever a Purchasing Entity does not accept Products and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the pick-up of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products except for loss or damage directly attributable to the negligence or wrongful intentional act or omission of the Purchasing Entity.
- C. Unless otherwise arranged between the Purchasing Entity and Contractor, all shipments of Products should be shipped within three-to-five days by a reliable and insured shipping company.

## 11. Warranties

- A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses or sells to the Purchasing Entity under this Agreement in accordance with the Contractor's standard warranties. The Contractor acknowledges that the Uniform Commercial Code applies to this Agreement. In general, the Contractor warrants that:
1. The Product will conform with the specific technical information about the Contractor's products which is published in the Contractor's product manuals or data sheets.
  2. The Product will be suitable for the ordinary purposes for which such Product is intended,
  3. The Product will meet any mandatory specifications provided in writing to the Contractor prior to reliance by the Participating Entity on the Contractor's skill or judgment when it advised the Purchasing Entity about the Product's ability to meet those mandatory specifications.
  4. The Product has been properly designed and manufactured for its intended use, and
  5. The Product is free of significant defects in material and workmanship, or unusual problems about which the Purchasing Entity has not been warned.
  6. Exhibit A contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Exhibit A. The warranties will not apply to use of a Product other than as anticipated and intended by the Contractor, to a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or to use of a Product in conjunction or combination with other products or software not authorized by the Contractor. The following is a list of the warranties attached as **Exhibit A**:
    - a) **(Insert Title)**
    - b) **(Insert Title)**
    - c) **(Insert Title)**
- B. Contractor may modify the warranties described in Exhibit A from time to time with 30 days prior written approval of the Contract Administrator.
- C. Warranty documents for Products manufactured by a third party shall be delivered to the Purchasing Entity with the Products, as provided by the Manufacturer.

## 12. Patent, Copyright, Trademark and Trade Secret Indemnification

- A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating States, Participating Entities, Purchasing Entities against any claim that any Product or Service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a Purchasing Entity based upon the Contractor's trade secret infringement relating to any Product or Service provided under this Agreement, the Contractor agrees to reimburse the Purchasing Entity for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:

1. Give the Contractor prompt written notice of any claim;
  2. Allow the Contractor to control the defense or settlement of the claim; and
  3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- B. If any Products or Service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:
1. Provide a Purchasing Entity the right to continue using the Products or Services;
  2. Replace or modify the Products or Services so that it becomes non-infringing; or
  3. Accept the return of the Products or Service and refund an amount equal to the depreciated value of the returned Products or Service, less the unpaid portion of the purchase price and any other amounts, which are due to the Contractor. The Contractor's obligation will be void as to any Products or Services modified by the Purchasing Entity to the extent such modification is the cause of the claim.
- C. The Contractor has no obligation for any claim of infringement arising from:
1. The Contractor's compliance with the Purchasing Entity's or by a third party on the Purchasing Entity's behalf designs, specifications, or instructions;
  2. The Contractor's use of technical information or technology provided by the Purchasing Entity;
  3. Product modifications by the Purchasing Entity or a third party;
  4. Product use prohibited by Specifications or related application notes; or
  5. Product use with products that are not the Contractor branded.

### **13. Price Guarantees**

The Purchasing Entities shall pay the lower of the prices contained in the Approved PSS or an Announced Promotion Price, Educational Discount Price, General Price Reduction price, Trade-In price, Per Transaction Multiple Unit Discount Print, or Standard Configuration Price . Only the General Price Reduction price decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial Cumulative, Per Transaction Multiple Unit, and Standard Configurations Discounts shall be submitted to the Contract Administrator in a format agreeable to both parties prior to signing the Agreement. Once a cumulative volume has been reached, the increased price discount will apply to all future orders, until the next level of cumulative volume is reached.

### **14. Product and Service Schedule**

The Contractor agrees to maintain the approved PSS in accordance with the following provisions:

- A. The approved PSS prices for Products and services will conform to the guaranteed price discount levels on file with the Contract Administrator for the following Products: Band 1: Servers; Band 2: Workstations, and Band 3, Auxiliary Storage.
- B. The Contractor may change the price of any Product or Service at any time, based

upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the Contract Administrator. The Contractor agrees that the approved PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.

- C. The Contractor may make model changes; add new Products, and Product upgrades or Services to the approved PSS in accordance with Item 15. Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the Contract Administrator for similar Products or Services.
- D. The Contractor agrees to delete obsolete and discontinued Products from the approved PSS on a timely basis.
- E. The Contractor shall maintain the approved PSS on a Contractor supplied Internet web site that has been formally approved by the Contract Administrator.

**15. Product Substitutions**

**A. Substitution of units/configurations**

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting Agreements. Substitution of different units and configurations will be permitted with the prior written approval of the Contract Administrator. This substitution is at the sole discretion of the Contract Administrator, subject only to review and approval of the Contract Administrator.

**B. Addition of units/configurations**

MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units to the approved PSS may be permitted, with the prior approval of the Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the Contract Administrator, subject only to review and approval of the WSCA Directors.

**16. Technical Support**

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the hardware and software installation or operation of Contractor-supplied Products during the product warranty period or during a support agreement.

**17. Take back/Environment/Energy Efficiency Programs**

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in their response to the RFP, including but not limited to:

- A. Take back/Recycling of CPUs, servers, monitors, flat panel displays, notebook computers, and printers. Costs are listed on the web site.
- B. Environment: Compliance with the European Unions' Directives, or other international directives; reduction/minimization/avoidance of the use of toxic and hazardous constituents; certification by independent third party eco-labeling programs (TCO, Blue Angel, and Nordic

- Swan); ISO 14001 certification; and the use of recyclable, nontoxic packaging.
- C. Energy Efficiency: Products meet the Energy Star or other recognized programs for energy efficiency.
  - D. Product labeling of compliance with Items B & C above, as well as identification of such information on the web site.

The Contractor will notify the Contract Administrator, in writing, of any additions/changes/deletions to the above programs.

**18. Product Delivery**

Contractor agrees to deliver Products to Purchasing Entities within 10 - 14 days after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order.

**19. Force Majeure**

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, strike, riot, industry-wide constraints, or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

**20. Records and Audit**

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Minnesota transactions must be made available and subject to examination by the contracting agency or its agents, the Legislative Auditor and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

**21. Independent Contractor**

The Contractor and its agents and employees are independent contractors and are not employees of the State of Minnesota or of any participating entity. The Contractor has no authorization, express or implied to bind the Lead State, NASPO, WSCA or any Participating Entity to any agreements, settlements, liability or understanding with other third parties whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or Participating Entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead State or Participating Entity as a result of this Agreement.

**22. Use of Servicing Subcontractors**

The Contractor may subcontract services and purchase order fulfillment and/or support in

accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

- A. Reseller/Agent, Service Provider or Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum, or as noted in the Participating Addendum on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

**23. Payments to Subcontractors**

In the event the Contractor hires subcontractors to perform all or some of the duties of this Agreement, the Contractor understands that Minn. Stat. § 16A.1245 requires that any such subcontractor be paid within ten (10) days of the Contractor's receipt of payment from the State for undisputed services provided by the subcontractor. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Agreement. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor any amounts due from the Contractor for work performed under this Agreement and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor. The Contractor shall ensure that the subcontractor transfers all intellectual or industrial property rights, including but not limited to any copyright it may have in the work performed under this Agreement, consistent with the intellectual property rights and ownership sections of this Agreement. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Agreement, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

**24. Indemnification**

The Contractor shall hold the Lead State, Participating Entities and its agencies and employees harmless and shall indemnify the Lead State, Participating Entities and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to real property or tangible personal property arising from the negligent or willful acts or omissions of the contractor, its agents, officers, employees or subcontractors. Contractor shall not be liable for damages that are the result of negligence by the Lead State, Participating Entity, or its employees.

**25. Amendments**

Agreement amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Agreement amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

**26. Scope of Agreement**

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**27. Severability**

If any provision of this Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Agreement is legally valid, it shall not be affected by such declaration or finding and shall be fully performed.

**28. Enforcement of Agreement/Waivers**

- A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Agreement shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the forbearing/indulging party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.
- B. Waiver of any breach of any provision of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.
- C. Neither party's failure to exercise any of its rights under this Agreement will constitute or be deemed a waiver or forfeiture of those rights.

**29. Web Site Maintenance**

- A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the approved PSS, service selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product specifications and other aids in accordance with reasonable instructions provided by the Contract Administrator. The Contractor agrees that the approved PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirements will be grounds for further action to be taken against the Contractor.
- B. The Contractor agrees to maintain and support Participating State and Entity Internet website for access to the specific Participating Entity approved PSS, as well as all other items listed in Item 29.A. listed above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.
- C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reporting.

**30. Equal Opportunity Compliance**

The Contractor agrees to abide by federal laws and the laws, regulations, and executive orders of the state in which it's primary place of business is located pertaining to equal employment opportunity. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color,

religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of the Agreement.

**31. Limitation of Liability**

The Contractor's liability to a Purchasing Entity for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the products and services that are the subject of the Purchasing Entity's claim. The foregoing limitation does not apply to Paragraphs 12 and 24 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence. In no event shall the Contractor be liable for any indirect, special, punitive, or consequential damages arising out of this Agreement or the use of the Products or Services purchased by the Purchasing Entity hereunder.

**32. Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

**33. Change in Contractor Representatives**

Contractor shall appoint a primary representative to work with the Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the Contract Administrator of changes in any Contractor key personnel, in writing, and in advance, if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

**34. Release**

The Contractor, upon final payment of the amount due under this Agreement, releases the Lead State and Participating Entities, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement, except as expressly provided in Paragraph 41. Survival, below. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

**35. Data Practices**

- A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor in accordance

with this Agreement that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13.

- B. In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data referred to in this article by either the Contractor or the State.
- C. The Contractor agrees to indemnify, save, and hold the State, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of the Agreement. In the event that the Contractor subcontracts any or all of the work to be performed under the Agreement, the Contractor shall retain responsibility under the terms of this paragraph for such work.
- D. The Contractor agrees to be bound by the data practices requirements as outlined in the Participating Addendum of a Participating State or Participating Entity.

**36. Organizational Conflicts of Interest**

- A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:
  - a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
  - the Contractor's objectivity in performing the work is or might be otherwise impaired; or
  - the Contractor has an unfair competitive advantage.
- B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Agreement. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Agreement and did not disclose the conflict to the Contract Administrator, the State may terminate the Agreement for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Agreement," "Contractor," and "Contract Administrator" modified appropriately to preserve the State's rights.

**37. Replacement Parts**

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be refurbished.

**38. FCC Certification**

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

**39. Site Preparation**

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and Services and shall bear the costs associated with the site preparation.

**40. Assignment**

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Agreement or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. This Agreement is a manufactured-direct solicitation and Agreement. Assignment to an entity that is not a manufacturer, as defined in this Agreement, is **NOT** within the Scope of this Agreement. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Agreement. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Agreement due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Agreement to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Agreement. The Contractor may assign payments in accordance with specific provisions stated in a Participating Addendum.

**41. Survival**

Certain paragraphs of this agreement including but not limited to Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; Limitation of Liability; Governing Law; Audits; and Publicity shall survive the expiration of this agreement. Software licenses, warranty and service agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

**42. Succession**

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

**43. Notification**

- A. If one party is required to give notice to the other under the Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery through the US Postal service shall be deemed as delivered three business days after being mailed. Delivery may be by certified United States mail, or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. All notices shall be addressed as follows:

**To MMD:**

Department of Administration

Materials Management Division  
Bernadette Kopischke, CPPB  
Acquisition Management Specialist  
50 Sherburne Avenue  
112 State Administration Building  
St. Paul, MN 55155  
Fax: 651.297.3996  
Email: bernie.kopischke@state.mn.us

**To Contractor:**

**(Insert name and address)**

- B. Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 44. The carrier for mail delivery and notices shall be the agent of the sender.

**44. Reporting and Fees**

**A. Administration Reporting and Fees**

1. The Contractor agrees to provide periodic utilization reports to the Contract Administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 30
December 31	January 31
March 31	April 30

2. The periodic report shall include, but not be limited to the net (gross sales minus returns, credits, and deductions) sales for the period subtotaled by Purchasing Entity name, within the Purchasing Entity's state name. A standard format of data elements shall be developed for the report. The Contractor shall submit a check payable to Western States Contracting Alliance for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period.
3. The Contractor agrees to include all Reseller Agent sales in the periodic utilization reports described above. In addition, the Contractor agrees to include in the utilization report a Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
4. The Contractor agrees to provide with the quarterly utilization report a supplemental report of the credits associated with the units taken back in a format to be mutually agreed to.
5. The utilization reports shall be submitted to the Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.

6. If requested by the Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on a mutually agreed magnetic media in a mutually agreed format. Such requests shall not exceed twelve per year.
7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.
8. The Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

**B. Participating Entity Reports and Fees**

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in a Participating Addendum that is made a part of this Agreement. The Contractor may adjust approved PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no effect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.
2. The Contractor agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the content and delivery method of the report. Methods of delivery may include direct access to Internet or other databases.
3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

**45. Default and Remedies**

- A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
  1. Consistent nonperformance of contractual requirements; or
  2. A material breach of any term or condition of this Agreement.
- B. A written notice of default, and an opportunity to cure within 30-days notification of the written notice, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- C. If the default remains after the opportunity for cure, the non-defaulting party may:
  1. Exercise any remedy provided by law or equity;
  2. Terminate the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
3. Impose liquidated damages as mutually agreed by the parties, as specified in

an Amendment to a Participating Addendum;

4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations from within the Participating Entity's jurisdiction.

**46. Audits**

- A. The Contractor agrees to assist the Contract Administrator or designee with web site Product and pricing audits based on mutually acceptable procedures.
  1. The product audit will closely monitor the products and services listed on the website to insure they comply with the approved products and services. The addition of products or services not approved by the Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.
- B. Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

**47. Extensions**

If specifically authorized by provision in a Participating Addendum, the Contractor may, at the sole discretion of the Contractor and in compliance with the laws of the Participating State, offer Products and services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the State has no liability whatsoever concerning payment for products or services.

**48. Sovereign Immunity**

The State does not waive its sovereign immunity by entering into this Agreement and fully retains all immunities and defenses provided by law with regard to any action based on this Agreement.

**49. Ownership**

- A. **Ownership of Documents/Copyright.** Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Agreement and paid for by the State shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Agreement. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Agreement without the prior written consent of the State.
- B. **Rights, Title and Interest.** All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trade marks, and service marks in the said documents that the Contractor conceives or originates, either individually or jointly with others, which arise out of the performance of the Agreement and are ordered as a work product, will be the property of the State and are, by the Agreement, assigned to the State along with ownership of any and all copyrights in the copyrightable material. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain

and register copyrights on such materials. Where applicable, works of authorship created by the Contractor for the State in performance of the Agreement shall be considered "works for hire" as defined in the U.S. Copyright Act. Nothing in this Agreement shall be construed as transferring any right, title, or interest in any of the Contractor's or their third party's confidential information, trademarks, copyrights, intellectual property or other proprietary interest.

**50. Prohibition Against Gratuities**

- A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Agreement if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Agreement, or securing favorable treatment with respect to the award or amendment of this Agreement, or the making of any determinations with respect to the performance of this Agreement.
- B. The Contractor certifies that no elected or appointed official or employee of the State has benefitted or will benefit financially or materially from this Agreement. This Agreement may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

**51. Antitrust**

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

**52. Right to Publish**

- A. Any publicity given to the program, publications or services provided resulting from the Agreement, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Agreement prior to its approval by the Contract Administrator.
- B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Agreement without the prior written consent of the Agreement Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

**53. Performance While Dispute is Pending**

Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under this Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

**54. Hazardous Substances**

To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity with Material Safety Data Sheets regarding those substances (including mercury). A copy must be included with each delivery.

**55. Customer Satisfaction/Complaint Resolution**

- A. The Contractor's process for resolving complaints concerning products, support, and billing problems is attached as **Exhibit B**.
- B. The Contractor will submit a format for a survey for approval by the Contract Administrator. The Contractor will survey its customers in each Participating State two (2) months prior to the annual meeting with the Contract Administrator.

**56. Value Added Services**

The Contractor is expected to provide such services as installation, training, and software imaging upon request of the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**, including relative costs associated with those services.

**57. E-Rate Program**

The Contractor's E-Rate identification number is SPIN # and list of E-Rate qualifying products is as follows:

The Contractor shall make every effort to continue its involvement in this program and to add products as applicable.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the State of Minnesota, Commissioner of Administration, below.

**1. CONTRACTOR**

The Contractor certifies that the appropriate person(s)

By:  
Title:  
Date:

By:  
Title:  
Date:

**2. MATERIALS MANAGEMENT DIVISION**

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By:

Title: Acquisition Management Specialist

Date:

**3. COMMISSIONER OF ADMINISTRATION**

Or delegated representative.

By:

Date:

## PARTICIPATING ADDENDUM

COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES

MASTER PRICE AGREEMENT

(Contractor's Name)

(Contract Number)

(Participating Entity Name)

**1. Scope:**

Briefly describe the jurisdiction of the governmental entity. If the jurisdiction includes all the governmental entities within an entire state, a statement to that effect will suffice)

**2. Changes:**

(Insert specific changes or a statement that no changes are required)

**3. Primary Contact:**

The primary participating entity contact ,for participation by "Customers" as defined in Scope above, for this participating addendum is as follows:

**Participating Entity Name:**

**Contact Name:**

**Address:**

**Telephone:**

**Fax:**

**E-mail:**

The primary Contractor contact for this participating addendum is as follows:

**Contractor:**

**Contact Name:**

**Address:**

**Telephone:**

**Fax:**

**E-mail:**

**4. Servicing Subcontractors:**

The following servicing subcontractors are authorized:

**(Insert servicing subcontractors' name (or website address where they can be found), or include a statement such as all contractor authorized business partners in the State of \_\_\_\_\_ . Also add a statement as to where the orders and payments go.)**

This Addendum and the Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent

purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by Contractor below.

**Signatures as required by State Statutes, Rules or Policies**

## **APPENDIX B**

### **PRICING CONFIGURATION FORMS**

Published: Sept., 2005

REISSUE OF REQUEST FOR PROPOSAL FROM  
MANUFACTURERS OF MID-RANGE PERSONAL COMPUTER EQUIPMENT  
for

Page 69 of 88 Pages

The State of Minnesota, the Western State's Contracting Alliance  
and the National Association of State Procurement Officials

## BAND 1 - SERVER ONE

Price Configuration Form One

### MINIMUM REQUIREMENTS

### VENDOR'S RESPONSE TO MINIMUM REQUIREMENTS

**Application:** File/Print Server

**Type:** Rack

**Processors:** 4 Intel 3.33 Ghz Xeon™ MP

**Cache:** 8 MB Level 2 Cache

**Memory:** 32GB 400-MHz DDR2 ECC SDRAM  
(16x2GB modules) Dual Rank

**Graphics:** Integrated - in the box

**System Controller:** SCSI

**Storage:** RAID 5, 72 GB internal (or equivalent)

**Operating System (Intel Based equipment):** Windows  
Server 2003 Enterprise Edition

**Operating System (Other, UNIX, LINUX, etc.):**

**Warranty:** 3 year parts and labor, at St. Paul,  
Minnesota (for costing purposes only)

TOTAL CONFIGURATION PRICE \$ \_\_\_\_\_

Cross Reference to PSS Item number (s): \_\_\_\_\_

**Takeback Charge:** \$ \_\_\_\_\_ Pick up/Ship From St. Paul, Minnesota (for costing estimates)

## BAND 1 SERVER TWO

Price Configuration Form Two

### MINIMUM REQUIREMENTS

### VENDOR'S RESPONSE TO MINIMUM REQUIREMENTS

**Application:** Mid-Range

**Type:** Rack

**Processor:** Four (4) Intel® Xeon™ MP 3.0GHz/4 mb

**Processor:** Additional Four (4) Intel® Xeon™ MP 3.00  
Ghz/2MB processors

**Memory:** 32GB Addressable (32x1024MB +  
8x1024MB redundant memory)

**System Controller:** Integrated Smart Array 5i

**Storage:** RAID 5, Dual Channel 2x72GB, internal

**Internal Storage:** Two (2) Internal 300GB pluggable  
Ultra 320 SCSI Hard Drives

One (1) DAT 72 Hot Plug Tape Drive

One (1) 1.44 MB Floppy Drive

One Integrated 8X DVD-ROM Drive

**Warranty:** 3 year parts and labor, On-site St. Paul,  
Minnesota (for costing purposes only)

TOTAL CONFIGURATION PRICE \$

Cross Reference to PSS Item number (s): \_\_\_\_\_

**Takeback Charge:** \$ \_\_\_\_\_ Pick up/Ship From at St. Paul, Minnesota (for costing estimates)

## BAND 2 - DESKTOPS

Price Configuration Form Three - Workstation One (Under \$50,000)

### MINIMUM REQUIREMENTS

### VENDOR'S RESPONSE TO MINIMUM REQUIREMENTS

**Processor:** Intel Pentium 4 Processor 2.80 Ghz,  
800MHz FSB

**Cache:** 1MB L2

**Memory:** 512 MB DDR2 Dual Channel  
400 MHz SDRAM (2-DIMMs)

**Monitor:** 19" LCD Flat Panel Monitor

**Graphics:** Graphics Accelerator 4 MB AGP

**Sound:** Integrated Sound Card

**Video:** Integrated Video Card

**Hard Drive:** 40 GB Serial ATA, 7200 RPM w/2mb cache \_\_\_\_\_

**Floppy Drive:** 3.5" 1.44 MB Diskette Drive \_\_\_\_\_

**CD-ROM:** 32x Speed \_\_\_\_\_

**Network:** Integrated 10/100/1000 \_\_\_\_\_

**Keyboard:** 104+ Keyboard \_\_\_\_\_

**Mouse:** Two-Button USB Optical Wheel Mouse \_\_\_\_\_

**Operating System:** Microsoft Windows 2003/XP Pro \_\_\_\_\_

**Operating System (Other, UNIX, LINUX, etc.):** \_\_\_\_\_

**Warranty:** 3 year parts and labor,  
On-site at St. Paul, Minnesota

TOTAL CONFIGURATION PRICE \$

Cross Reference to PSS Item number (s): \_\_\_\_\_

**Takeback Charge:** \$ \_\_\_\_\_ Pick up/Ship From St. Paul, Minnesota (for costing

estimates)

## BAND 2 - DESKTOPS

Price Configuration Form Four - Workstation Two (\$50,000-\$100,000)

Responders should submit the specifications and pricing for a configuration that best fits this pricing configuration.

### MINIMUM REQUIREMENTS

### VENDOR'S RESPONSE TO MINIMUM REQUIREMENTS

**Processor:**

**Cache:**

**Memory:**

**Monitor:** 17" LCD Flat Panel Monitor

**Graphics:**

**Sound:** Integrated Sound Card

**Video:** Integrated Video Card

**Hard Drive:**

**Floppy Drive:** 3.5" 1.44 MB Diskette Drive

**CD-ROM:**

**Network:**

**Keyboard:** 104+ Keyboard

**Mouse:** Two-Button USB Optical Wheel Mouse

**Operating System:** Microsoft Windows 2003/XP Pro

**Operating System (Other, UNIX, LINUX, etc.):**

**Warranty:** 3 year parts and labor,  
On-site at St. Paul, Minnesota

TOTAL CONFIGURATION PRICE

\$

Cross Reference to PSS Item number (s): \_\_\_\_\_

**Takeback Charge:** \$ \_\_\_\_\_ Pick up/Ship From St. Paul, Minnesota (for costing estimates)

## BAND 4 - STORAGE SOLUTIONS

Price Configuration Form Five - Storage Solution One (Under \$50,000)

### MINIMUM REQUIREMENTS

### VENDOR'S RESPONSE TO MINIMUM REQUIREMENTS

Operating System:

Capacity: 2044GB (2.0TB)

Number of Drives: 14

Drive Size: 146GB

Drive Speed: 10,000 RPM

Drive Interface: Fiber Channel

Host-side Ports: 2

Number of Controllers: 2

Warranty: Three year parts and labor,  
On-site St. Paul, Minnesota

TOTAL CONFIGURATION PRICE: \$

**Takeback Charge:** \$\_\_\_\_\_ Pick up/Ship From St. Paul, Minnesota (for costing estimates)

Cross Reference to PSS Item Number: \_\_\_\_\_

## BAND 4 - STORAGE SOLUTIONS

Price Configuration Form Six - Storage Solution Two (\$50,000-\$100,000)

### MINIMUM REQUIREMENTS

### VENDOR'S RESPONSE TO MINIMUM REQUIREMENTS

Operating System:

Capacity: 8400GB (8.4TB)

Number of Drives: 28

Drive Size: 300GB

Drive Speed: 10,000RPM

Drive Interface: Fiber Channel

Host-side Ports: 2

Number of Controllers: 2

Warranty: Three year parts and labor,  
On-site St. Paul, Minnesota

TOTAL CONFIGURATION PRICE: \$

**Takeback Charge:** \$\_\_\_\_\_ Pick up/Ship From St. Paul, Minnesota (for costing estimates)

Cross Reference to PSS Item Number: \_\_\_\_\_

**APPENDIX C**  
**MINNESOTA, WSCA/NASPO REQUEST FOR PROPOSALS FROM**  
**MANUFACTURERS OF PRINTERS**

**RFP QUESTION FORM**

Please use this form to ask questions about the RFP. Submit ONE form for each question. Answers to questions will be posted on the MMD website and will be sent to the Distribution List. Questions will NOT BE attributed, if the form and the instructions are followed. Dates for submission of questions and when answer will be provided are in Section II, Paragraph A of the RFP.

Firm:	Representatives Signature:	Date Submitted:

**Question Number** \_\_\_\_\_ : (number questions consecutively for your firm)

**RFP Section/Paragraph/Appendix Reference** \_\_\_\_\_ :  
(provide the exact reference to the RFP section/paragraph/appendix being questioned - DO NOT reference "page number" since those change with each printer used to print the document)

**Question:** (be as specific and detailed, but brief, as possible, Minnesota will not provide opinion or interpretation of contract law or statute or law; Minnesota may choose not to respond to a question at its option and will simply say "**Minnesota chooses not to respond.**")

Submit questions by the deadline indicated in Section II, Paragraph A. as an email attachment as a Word document to: [bernie.kopischke@state.mn.us](mailto:bernie.kopischke@state.mn.us)

## APPENDIX D

### State Of Minnesota – Affirmative Action Data Page

If your response to this solicitation is or could be in excess of \$100,000, complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes 363A.36) certification requirement, and to provide documentation of compliance if necessary. **It is your sole responsibility to provide this information and—if required—to apply for Human Rights certification prior to the due date and time of the bid or proposal and to obtain Human Rights certification prior to the execution of the contract. The State is under no obligation to delay proceeding with a contract until a company receives Human Rights certification.**

**BOX A - For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months. All other companies proceed to Box B.**

Your response will be rejected unless your business:

has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR)

-or-

has submitted an affirmative action plan to the MDHR, which the Department received prior to the date and time the responses are due.

Check one of the following statements if you have employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- ☐ We have a current Certificate of Compliance issued by the MDHR. **Proceed to BOX C. Include a copy of your certificate with your response.**
- ☐ We do not have a current Certificate of Compliance. However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on \_\_\_\_\_(date). [If the date is the same as the response due date, indicate the time your plan was received: \_\_\_\_\_ (time). **Proceed to BOX C.**
- ☐ We do not have a Certificate of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. **We acknowledge that our response will be rejected. Proceed to BOX C. Contact the Minnesota Department of Human Rights for assistance.** (See below for contact information.)

**Please note:** Certificates of Compliance must be issued by the Minnesota Department of Human Rights.

Affirmative Action Plans approved by the Federal government, a county, or a municipality must still be received, reviewed and approved by the Minnesota Department of Human Rights before a certificate can be issued.

**BOX B - For companies which *have not* had more than 40 full-time employees in Minnesota but *have* employed more than 40 full-time employees on any single working day during the previous 12 months in the state where they have their primary place of business**

**BOX B - For those companies not described in BOX A**

Check below.

- ☐ We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. **Proceed to BOX C.**

**BOX C - For all companies**

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of the responder. You also certify that you are in compliance with federal affirmative action requirements that may apply to your company. (These requirements are generally triggered only by participating as a prime or subcontractor on federal projects or contracts. Contractors are alerted to these requirements by the federal government.)

Name of Company: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

**For further assistance with this form, contact:**

Minnesota Department of Human Rights, Compliance Services Section

Mail: 190 East 5<sup>th</sup> Street, Suite 700, St. Paul, MN 55101

Web: [www.humanrights.state.mn.us](http://www.humanrights.state.mn.us)

Email: [employerinfo@therightsplace.net](mailto:employerinfo@therightsplace.net)

TC Metro: (651) 296-5663

Fax: (651) 296-9042

Toll Free: 800-657-3704

TTY: (651) 296-1283

## APPENDIX E

### Trade Secret Information Form

Under Minnesota's Data Practices Act, data submitted in bids or proposals becomes public upon completion of the evaluation process for proposals and negotiations are complete, or upon completion of the selection process for bids. However, "trade secret information" as defined in Minn. Stat. §13.37, subd. 1(b), cannot be disclosed to the public. While the majority of data submitted in bids and proposals is not trade secret information, the following form is needed to assist the state in making appropriate determinations about the release of data provided in a bid or proposal.

**All responders must select one of the following boxes:**

- ☐ My bid/proposal **does not** contain "trade secret information." I understand that my entire bid/proposal will become public record in accordance with Minnesota Stat. §13.591.
- ☐ My bid/proposal **does** contain trade secret information because it contains data that:
- A. is a formula, pattern, compilation, program, device, method, technique or process; **AND**
- B. is the subject of efforts by myself or my organization that are reasonable under the circumstances to maintain its secrecy; **AND**
- C. derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

**Complete only if trade secret status is asserted:**

I am claiming that aspects of my bid/proposal contain trade secret information. I have completed the following:

- ☐ I have clearly marked and placed any data I claim to be "trade secret information" in a separate envelope **AND** I am attaching an explanation justifying the trade secret designation.

**Please note that failure to attach an explanation may result in a determination that the data does not meet the statutory trade secret definition. All data for which trade secret status is not justified will become public in accordance with Minn. Stat. § 13.591.**

By submitting this bid/proposal, responder agrees to indemnify and hold the State, its agents and employees, harmless from any claims or causes of action relating to the state's withholding of data based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by the state in defending such an action.



**APPENDIX F**

**STATE OF MINNESOTA  
DEPARTMENT OF ADMINISTRATION  
MATERIALS MANAGEMENT DIVISION**

**AFFIDAVIT OF NONCOLLUSION**

I hereby swear (or affirm) under the penalty of perjury:

1. That I am the responder (if the responder is an individual), a partner in the company (if the responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the responder is a corporation);
2. That the attached response for Personal Computer Equipment and Related Devices has been developed by the responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other responder of materials, supplies, equipment or services described in the RFP, designed to limit fair or open competition;
3. That the contents of the response have not been communicated by the responder or its employees or agents to any person not an employee or agent of the responder and will not be communicated to any such persons prior to the official opening of the responses; and
4. That I have fully informed myself regarding the accuracy of the statements made in this affidavit.

Authorized Signature:

Date:

Firm Name:

Subscribed and sworn to me this \_\_\_\_ day of

Notary Public

My commission expires

**APPENDIX G**  
**STATE OF MINNESOTA**  
**DEPARTMENT OF ADMINISTRATION**  
**MATERIALS MANAGEMENT DIVISION**  
**ENVIRONMENTAL REPORTS**

**ENVIRONMENTAL PREFERENCE.** A proportional preference of up to 10% will be given for **post-consumer** (PC) recycled content. (Note: No preference will be given for recycled content less than 10%.) For example, 90% recycled content would get a 9% preference, and 30% recycled content would get a 3% preference. The recycled content must be substantiated by the manufacturer's published document, such as a specification sheet or product brochure. The document must accompany the response in order to obtain the preference. **Claims of recycled content without valid documentation included in the response will not receive a preference.**

**POST-CONSUMER RECYCLED CONTENT**

If you want the preference for PC recycled content check here: ☐ Is documentation attached? ☐ Yes ☐ No

**Claims of recycled content without valid documentation included in the response will not receive a preference.**

If all items are the same recycled content percentage, record that here \_\_\_\_\_ %  
If the line items have different percentages, record the percentage per line here: Line 1 \_\_\_\_\_ %  
Line 2 \_\_\_\_\_ %  
Line 3 \_\_\_\_\_ %  
Line 4 \_\_\_\_\_ %

(Use a separate sheet if more lines are needed.)

The documentation must be clear and marked to show the applicable recycled content percentage. Failure to state the PC recycled content will result in no preference.

You can still mark your product with the environmental code RC and state a percentage of post-consumer content without documentation, but that will be used for reporting purposes and not to apply a preference.

**ENVIRONMENTAL PRODUCTS AND SERVICES**

**Environmental Characteristics for Reporting Purposes.** The State desires to purchase environmentally responsible goods and services where practicable. To identify these products and report the purchasing results, the State must know the environmentally responsible characteristics of the goods and services offered. Using the list of environmental codes below, specify which line items have environmentally responsible characteristics and enter the appropriate environmental code. The environmental codes\* are:

EE = Energy Efficient  
LT = Less Toxic  
PB = Plant-based  
RB = Rebuilt  
RC = Recycled Content

EM = Remanufactured  
RE = Repair  
US = Used  
WC = Water Conserving  
MU = Multiple Codes

Specify: \_\_\_\_\_

(post-consumer: \_\_\_\_\_ %)

TO = Other

Specify: \_\_\_\_\_

RK = Reduced Packaging

NO = None

Enter the appropriate environmental code for each item offered, either after the description of the item, or after the price.

If all goods and services offered are the same environmental code, enter it here: \_\_\_\_\_

If none of the items being offered have environmental characteristics, please check and initial here:

☐ \_\_\_\_\_.

\*See the next page for definitions of the environmental codes to assist in coding products by the line item.

**Mercury:** As per Minnesota Statutes, the State cannot buy mercury in thermometers and certain other products. Please certify below if your product does or does not contain mercury. The actual product specification will stipulate if mercury is prohibited.

Does your product contain mercury? ☐ Yes ☐ No

If yes, list the components that contain mercury:

### Environmental Codes Definitions

EE (Energy Efficient) - A product that uses less energy (either electricity or fossil fuel) to accomplish its task relative to a comparable product or to an earlier version of the same product by the same manufacturer.

LT (Less Toxic) - A product containing a smaller amount of toxic substances relative to a comparable product or a product reformulated to be less toxic.

PB (Plant-Based) - A product derived from renewable resources, including fiber crops (such as kenaf); chemical extracts from oilseeds, nuts, fruits and vegetables (such as corn and soybeans); agricultural residues (such as wheat straw and corn stover); and wood wastes generated from processing and manufacturing operations. These products stand in contrast to those made from fossil fuels (such as petroleum) and other less renewable resources (such as virgin timber).

RB (Rebuilt) - A product refurbished to a level less than a total remanufacture. The warranty is by the rebuilder, and may be different from the same product when new or remanufactured. Also called reconditioned or refurbished.

RC (Recycled Content) - A product containing materials that have been recovered or diverted from the solid waste stream after consumer use (post-consumer).

RK (Reduced Packaging) - A product presented for use with less packaging or alternative methods of packaging or shipping.

EM (Remanufactured) - A product restored to its original condition by extensive rebuilding, usually given an equal or better warranty than a new product.

RE (Repair) - A product that has had a defect corrected and can again serve its original function. Repairing is a less comprehensive process than either remanufacturing or rebuilding.

US (Used) - A product used or owned before without further manufacture.

WC (Water Conserving) - A product that requires less water to operate or to manufacture than a comparable product, or a different version of the same product from the same manufacturer.

MU (Multiple Codes) - A product that has several significant environmentally responsible characteristics, and could be classified under more than one code, but not one code is predominant.

TO (Other) - A product having environmentally responsible characteristics that does not fit into any of the categories listed above.

## APPENDIX H

### STATE OF MINNESOTA DEPARTMENT OF ADMINISTRATION MATERIALS MANAGEMENT DIVISION

#### TAXPAYER IDENTIFICATION

The Contract Vendor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number to federal and State tax agencies and State personnel involved in the payment of State obligations. These identification numbers may be used in the enforcement of federal and State tax laws which could result in action requiring the Contract Vendor to file tax returns and pay delinquent tax liabilities, if any (Minn. Stat. § 270.66).

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Federal Employer ID Number or Social Security: \_\_\_\_\_

Minnesota State Tax ID Number: \_\_\_\_\_

Minnesota Vendor Registration Number: \_\_\_\_\_

If you are not registered as a vendor to the State, you may register  
online at [www.mmd.admin.state.mn.us/mn02000.htm](http://www.mmd.admin.state.mn.us/mn02000.htm).

(Note: If approved, you will receive your vendor number three business

days

after you register.)

Are you a sole proprietorship? ☐ Yes ☐ No

Are you an independent contractor? ☐ Yes ☐ No

Responders may download the entire RFP document in Microsoft Word by using the following path:

<http://www.mmd.admin.state.mn.us/doc/WSCANASPOReissueMidRangeServerWorkstationSANBands>

IN ORDER TO DOWNLOAD THE RFP DOCUMENT, ENTER THE FILE PATH AND NAME IN YOUR BROWSER. WHEN THE FILE OPENS, USE YOUR BROWSER'S "SAVE AS ..." FEATURE TO SAVE THE DOCUMENT TO YOUR COMPUTER HARD DRIVE OR DISK.

THE "SAVE AS" FEATURE DOES NOT WORK FROM THE LINK - YOU NEED TO TYPE THE FILE PATH AND NAME IN TO YOUR BROWSER TO BE ABLE TO SAVE THE DOCUMENT.

IF YOU NEED ASSISTANCE, PLEASE CONTACT OUR HELPLINE AT 651.296.2600



## REQUEST FOR PROPOSAL (RFP) ADDENDUM

Addendum No.: 1

Date of Addendum: October 17, 2005

Due Date, Time: November 7, 2005, 2:30 p.m. CT

Revised Date, Time: No Change

Agency: State of Minnesota, NASPO/WSCA

Acquisition Mgmt. Spec.: Bernadette Kopischke, CPPB

Web Registration No.: 7110

Title: Expansion of Mid-Range Server, Workstation, SAN Bands

### SCOPE OF ADDENDUM

Instructions for obtaining this RFP in a Word format were included in the original RFP, and are repeated here:

Responders may download the entire RFP document in Microsoft Word by using the following path:

<http://www.mmd.admin.state.mn.us/doc/WSCANASPOReissueMidRangeServerWorkstationSANBands.doc>

IN ORDER TO DOWNLOAD THE RFP DOCUMENT, ENTER THE FILE PATH AND NAME IN YOUR BROWSER. WHEN THE FILE OPENS, USE YOUR BROWSER'S "SAVE AS ..." FEATURE TO SAVE THE DOCUMENT TO YOUR COMPUTER HARD DRIVE OR DISK.

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On the following pages are the questions that were received by the due date, and their respective answers.

This addendum shall become part of the RFP and **MUST** be returned with the RFP.

RESPONDER NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

For TTY/TDD communication, contact us through the Minnesota Relay Service at 1.800.627.3529.

**Q.1.** My company manufactures and supports Band 4 Storage Solutions asked for in your RFP posting number 7110. However, we do not manufacture PCs. Would it be acceptable for us to respond to the Storage portion of the RFP and not respond to the PC portion?

**A.1.** Yes.

**Q.2.** What is your definition of "on site"? With regards to maintenance and support, being that there are many locations please define "on site"; physically have person on site or drop shipment/replacement?

**A.2.** On site means that the service technician will come to the site to repair the equipment. The method for replacing the equipment, if it can not be repaired, is a different issue. The parties involved will need to agree upon the process for replacement at that time.

**Q.3.** I am confused by the scope of this RFP. Primarily because the intent of this RFP reads:

This RFP is for middle range equipment, e.g., mid-range servers, high-end workstations, and some larger storage solutions that are becoming more common and more useful in office/division/institutional settings. This RFP is NOT for high-end servers intended for statewide or nationwide or worldwide operations and applications. More specifically, this Reissued RFP is to increase the scope to expand the following bands that were part of the original RFP/Contracts, as further detailed in this RFP:

- Band 1 - Servers, to include pricing configurations for mid-range servers between \$50,000 and \$100,000, including file and print servers.
- Band 2 - Desktop, to include high-end workstations between \$50,000 and \$100,000.
- Band 4 - Auxiliary Storage, to include pricing configurations for mid-range storage solutions between \$50,000 and \$100,000, including NAS, SAN, CAS, and CNS.

The WSCA member-State directors may authorize State and local governmental entities nationwide to use the WSCA contracts, subject to approval of the local State purchasing director and local statutory provisions.

Yet there is a desktop config., Band Two Workstation One (under \$50,000) within the scope of this RFP. Would existing agreements not cover this since the scope was to increase the limit beyond 50K? None of our desktop configurations would ever exceed \$50K.

**A.3.** Responses to this RFP are not restricted to only those vendors who hold current WSCA/NASPO Contracts. Therefore, for pricing comparison purpose, responders should respond to all of the pricing Bands where they have products available, even if those products are already covered by a current WSCA/NASPO Contract.

**Q.4.** There do not seem to be any specs on the second desktop; "Configuration Form Four". What is the processor, memory, cache, cd-rom, network, video? And what form are you wanting; tower or small form factor?

**A.4.** The instructions for this Configuration are for the responder to submit the specifications and pricing that best fit this configuration. Therefore, responders should use their best judgment in determining what type of specifications for a workstation would fit in this price category of between \$50,000 and \$100,000; as well as responding to the Breadth of Offer in IV.2.a. for this Band, and complete PSS in IV.9.

**Q.5.** We are a computer manufacturer based and were interested in placing a bid for the WSCA RFP for the expansion of bands as per the bid documents. The question I have is if this RFP is an expansion of the bands of the current vendors or if other new manufacturers would also be considered in these categories.

**A.5.** See answer to Question No. 3.

**Q.6.** Price Configuration Form - Band One - Server Two. Is the specification requesting the typical "8-way" SMP server definition of eight physical processors, where each physical processor installs into the server individually and each processor has L2 cache assigned to it, or is it open to a "4-way" SMP server with four physical processors if the physical processor has 2 cores on it?

**A.6.** All Specifications are open to any type of configuration. As stated in section IV.14.Cost "If you are unable to match the exact specifications, please provide your closest equivalent."

**Q.7.** Section III Response Format and Organization, C.1. Proposal Organization. As a Contractor already awarded a Contract, are items I, j, and k, which have been previously submitted and accepted, required for this bid?

**A.7.** Items I and j are not required. Item k (Appendices F through J) is required.

- Q.8.** Section 1 Introduction, F-Definitions, Participating Addendum/Addenda. Upon satisfactory negotiation/completion of this RFP, will a master Addendum be issued/accepted by each Participating Entity or will each vendor be required to issue/negotiate individual addendums. Of particular interest is those PA's that formally restated the intention of the WSCA agreement for configurations to be capped at \$50K per configuration (identical language used.)
- A.8.** A master Addendum will be negotiated to the Master Price Agreement held by the current Contractors, as we have done in the past. However, it will be up to each Participating Entity, based on their legal requirements and their desire to expand this Bands to the new cap of \$100,000, to determine if an addendum is required to the Participating Addendum that they signed with the Contractor.
- Q.9.** Appendix D, E, F, G, H. Could the State please provide electronic versions of these Appendices in Microsoft Word to facilitate completion and returning MS Word format as required by the RFP?
- A.9.** See the instructions on page 1 of this Addendum on how to obtain the entire RFP in Word format.
- Q.10.** Section I. Introduction, Item A. Intent, 3rd Paragraph. As a current vendor on the WSCA Contract, all of our hardware products are listed on Contract. The majority of our products are sold in the sub-\$50k range, but a few can be configured in such a manner where they fit into the \$50k - \$100k range per unit. Should a State buying on this Contract require one of our currently approved products but configured in the \$50k to \$100k per unit range, do we need to go through this formal exercise in order to provide this solution? Or can we submit a simple modification to have the ability to sell a currently approved product within this range?
- A.10.** See answer to Question No. 3. If the products submitted in response to the RFP are approved, then the Master Price Agreements (MPA) held by the current Contractors will be amended.
- Q.11.** Section IV, Item B.2.a. Breadth of Offering, 2nd paragraph. It appears the 2nd paragraph, last sentence, was cut off at "and Band." Can you provide the complete language for this section?
- A.11.** This paragraph should read as follows: Current Contractors need to only provide this list for the models or variations available in Band 1, Server Two; Band 2, Workstation Two; and Band 4, Storage Solution Two. However, pricing needs to be submitted for all pricing Bands.
- Q.12.** Section IV, Item B.2.a. Breadth of Offering, 3rd paragraph. Similar to question above, is it necessary to list products currently approved on the WSCA contract for this section?
- A.12.** See answer to Question No. 11.
- Q.13.** Appendix B, Band 1 Server Two (\$50K to \$100K), Processor Requirements. In order to provide an additional 4 processors, would an additional 4 processor server clustered with another 4 processor server be an acceptable solution?
- A.13.** See answer to Question No. 6.
- Q.14.** Appendix B, Band 1 Server Two (\$50K to \$100K), Storage Requirements. Under the Storage requirement, RAID 5 is required with 2 hard drives. RAID 5 requires at least 3 hard drives. Is it your intent to be able to run RAID 5 with 2 drives or are you presenting the 2 hard drives as a general minimum requirement?
- A.14.** This was a typing error. The minimum number of hard drives should read 3.
- Q.15.** Appendix B, Band 1 Server Two (\$50K to \$100K). We are currently approved on the WSCA Contract to sell 3rd party servers as well as our own hardware. Is it necessary to go through this formal process in order to add future products in the \$50K to \$100K range to our contract?
- A.15.** Yes, you need to go through this process to add this price range. After the award and the current MPA is amended, changes/additions/deletions to the products will need to go through the written letter-approval process currently being used to update an MPA.

**Q.16.** Appendix B, Band 4 Storage Solutions (\$50K to \$100K), Capacity. In order to provide the 8.4 TB requested, a quantity of 3 of our 4TB storage systems clustered together working as a single unit would be deployed. Is that acceptable.

A.16. See answer to Question No. 6.

**Q.17.** Appendix B, Band 4 Storage Solutions (\$50K to \$100K), Drive Size and Drive Speed. Our storage drive size is currently 250GB at 7200RPM. Would this be acceptable?

A.17. See answer to Question No. 6.

**Q.18.** Appendix B, Band 1 - Server 2. Does this spec. in fact call for a server capable of having 8 CPU's installed.

A.18. See answer to Question No. 6.

**Q.19.** Appendix B, Band 1 - Server 2. If yes to Question No. 18, can we offer a 4-way dual core server which is effectively 8 CPU's.

A.19. See answer to Question No. 6.

**Q.20.** Appendix B, Band 1 - Server 2. Regarding the CPU's - Four of them are listed as "primary" with 4MB cache. Four are listed as "additional" with 2MB cache. Since all CPU cache in a single server must match, what is the desired cache amount?

A.20. 4 MB.

**Q.21.** Appendix B, Band 1 - Server 2. Under storage, the spec. reads "Raid 5" but the drives are specified as 2-72GB and 2-300GB. Raid 5 is not possible with this hard drive arrangement. Please clarify.

Q.21. See answer to Question No. 6.

**Q.22.** Appendix B, Band 1 - Server 2. Please explain take-back charge. We responded to this on the original bid. Is this necessary for this bid as well?

A.22. Take-back is explained in Section IV.B.13. Current Contractors need to respond to this for pricing comparison purposes as stated in the answer to Question No. 3.

**Q.23.** Appendix B, Band 1 - Server 1. The spec. calls for Raid 5, 72GB. Is the 72GB being specified as the total space or usable space?

A.23. Total space.

**Q.24.** Appendix B, Band 4 - Storage Solutions. The band is listed as "Storage Solution One" (Under \$50,000). Should that read over \$50,000?

A.24. No, Storage Solution Two is for the \$50,000 - \$100,000 price range.

**Q.25.** Section IV.B.2.a., 2nd paragraph, 2nd sentence. "...Current Contractors need to only provide this list for models or variations available in Band 1, Server Three and Server Four categories, and Band ..."  
It is unclear what this 'partial' sentence means, could the State clarify this sentence. Also, don't understand the reference to Server Three and Server Four categories. Are there such categories, and if so, where are they defined?

A.25. See answer to Question No. 11.

- Q.26.** General RFP Question. We request that the RFP be provided in an editable soft copy format. This would enable us to more easily prepare our proposal in the format requested.
- A.26.** See answer to Question No. 9.
- Q.27.** Appendix B, Band 1, Server 2. Processor: Additional Four (4) Intel Xeon MP 3.00GHz/2MB processors. Does this mandate the existence of 8 CPU Sockets available in the server chassis, sometimes referred to as an 8-Way Server? Will a 4 socket server populated with Intel Dual Core MP Processors with the same or similar performance capabilities, effectively delivering 8 processors, satisfy this requirement?
- A.27.** See answer to Question No. 6.
- Q.28.** Appendix B, Band 2 Price Configuration Form 3. Is XP Pro acceptable as a substitute for Windows 2003?
- A.28.** See answer to Question No. 6.
- Q.29.** Appendix B, Band 2 Price Configuration Form 3. AGP graphics are nearing end of life. This vendor uses PCI Express X16 which offers equivalent or better performance. Is this acceptable?
- A.29.** See answer to Question No. 6.
- Q.30.** Appendix B, Band 4 Storage Solutions. The number of hosts supported by a storage solution can have a dramatic impact on the pricing and product proposed. With that in mind, can you provide guidance on the minimum number of host support required for each storage pricing band?
- A.30.** No. Responders need to submit a standard configuration that would fit within the pricing parameters of the band.
- Q.31.** Appendix B, Band 4 Storage Solutions. Infrastructure associated with implementing a storage solution can dramatically impact solution cost - HBA's, switches, cables, services, software, etc. Should we include associated infrastructure costs in our configuration and pricing?
- A.31.** Pricing should include all hardware and software components necessary to make the unit/configuration operational. Services do not need to be included.
- Q.32.** Section III, C (Proposal Format). Do Contractors who were awarded a Contract based on the RFP from Manufacturers of Personal Computers and Related Devices that was issued on February 9, 2004, need to include Appendices D, E, F, G, H as part of their submissions?
- A.32.** Yes.
- Q.33.** Section IV. 2.a. Please clarify the second paragraph of section a. Breadth of Offering. Part of the second sentence is missing. What do current Contractors need to provide?
- A.33.** See answer to Question No. 11.